

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550



A.M.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

VINCENT PAPA, VICTOR EUPHEMIA,
ANTHONY STANZIONE, JOHN
LOCORIERI, VINCENT PAPA, JR.,
and PETER GIAMARINO,

Defendants.

74 Cr. 251

APPENDIX

Bp/c

BEFORE: HON. CHARLES L. BRIANT, JR.,

October 24, 1974

10:15 A.M. - Room 1106

APPEARANCES:

PAUL J. CURRAN, United States Attorney
For the Government

BY: DANIEL BELLER, ESQ., Assistant United States
Attorney

IVAN FISHER, ESQ.,
For Defendant Vincent Papa,

THEODORE ROSENBERG, ESQ.,
For Defendant Victor Euphemia.

NANCY ROSNER, ESQ.,
For Defendant Anthony Stanzone.

FRANK A. LOPEZ, ESQ.,
For Defendant Vincent Papa, Jr.

STEPHEN LAIFER, ESQ.,
For Defendant Peter Giamarino.

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PAGINATION AS IN ORIGINAL COPY

THE CLERK: United States of America against
Vincent Papa et al.

MR. BELLER: The government is ready.

MR. FISHER: The defendant Vincent Papa is ready,
your Honor.

MRS. ROSNER: Ready for Stanzione.

MR. LOPEZ: Ready for Vincent Papa, Jr.

MR. ROSENBERG: Ready for the defendant Euphemia.

MR. LAIFER: Ready for the defendant Giamarino.

THE COURT: Let me see whether everybody is here.
Where is the defendant Vincent Papa? All right,
thank you.

Mr. Euphemia?

MR. ROSENBERG: He is hard of hearing, your Honor.

THE COURT: You may be seated.

Mr. Stanzione?

MRS. ROSNER: He is not present. I advised him
that he did not have to appear this morning and that was my
understanding.

THE COURT: I don't know where you reached that
understanding. I have an invariable practice unless there
is some tremendous difficulty of difference to have the
defendant personally present.

MRS. ROSNER: He is employed and I didn't know that

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2 THE COURT: I would like him to get here as soon
3 as he can.

4 MRS. ROSNER: I will call him and he will be here
5 at least for the afternoon session.

6 THE COURT: No proceeding should be conducted
7 in a matter of this importance without their presence.

8 MRS. ROSNER: It is entirely my fault.

9 THE COURT: Mr. Papa, Jr.?

10 MR. LOPEZ: He is somewhere in the courthouse in
11 another courtroom. There is a little confusion downstairs
12 and they are sending everyone to 128. I don't want to delay
13 the proceedings but I could go down and watch for him.

14 THE COURT: We can arrange to get him up here.
15 You think he might be in 128?

16 MR. LOPEZ: Yes, your Honor.

17 THE COURT: All right. But at all proceedings I
18 want everybody here.

19 MR. BELLER: Your Honor, I think this motion was
20 brought on solely by Mr. Fisher in behalf of Mr. Papa, and,
21 in any event, the government's position is that only Mr.
22 Papa has standing.

23 THE COURT: He may be the only one who has standing
24 but the other people are vitally interested in the outcome,
25 aren't they?

2 MR. BELLER: They have an interest in the outcome.

3 THE COURT: So I am not going to exclude anybody
4 from participation, of course. Nothing can be redundant and
5 repetitious. Nobody can use his presence to delay the pro-
6 ceedings.

7 I am going to permit all the defendants reasonable
8 participation and notice of what is going on.

9 You may proceed, Mr. Beller.

10 MR. FISHER: If your Honor please, prior to the
11 calling of the first witness I served certain subpoenas on
12 the Department of Justice. I have been advised that the
13 returns have been made but the government's position would
14 be in effect to quash the subpoena.

15 THE COURT: Why do I have to hear that now?
16 Shouldn't we go ahead with our live witnesses and get the
17 proof in the record?

18 MR. FISHER: The document that I have subpoenaed,
19 your Honor, would assist me created in the cross-examination
20 in of at least two of the government witnesses, specifically
21 Agent Pallatroni and Patrolman George Reilly.

22 What I am specifically talking about, your Honor,
23 is this: After hearing before Judge Duffy Mr. Pallatroni
24 and Mr. Reilly both testified to certain transmissions that
25 were supposedly made from their car radios to headquarters

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2 checking out the various things.

3 I have been advised that under the federal law
4 or the federal communications law, any time you have this
5 kind of radio receiver and transmitter, a log must be kept
6 of all such communications.

7 I have been further advised that the government
8 has followed this particular law and did so that particular
9 night and there is a log and that the log would indicate times
10 of these supposed transmissions and probably even some of the
11 contents of the transmissions.

12 THE COURT: Specifically what transmissions do
13 you have in mind?

14 MR. FISHER: Mr. Pallatroni testified at the prior
15 proceeding that he had endeavored to check out the license
16 plate 176-MR, which later found out to have belonged to a
17 lawyer named Murray Richmond.

18 There is a conflict in the testimony between Mr.
19 Pallatroni and Agent Reed. Agent Reed testified in the prior
20 proceeding that the request of the check-out of 176-MR was
21 made prior to the arrest of Mr. DiNapoli.

22 THE COURT: Made by whom?

23 MR. FISHER: Himself and/or Pallatroni. He and
24 Pallatroni were in the same car. Pallatroni said that he
25 didn't check it out until the following day because the

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2 computer in Albany was broken.

3 To begin with, we will attempt to prove, your
4 Honor, that the computer in Albany was in fact working quite
5 well then and that in fact we believe that Mr. Pallatroni
6 was able to check out Mr. Richmond's license plate.

7 The importance of that is this, your Honor:
8 Mr. Pallatroni claimed that the first time that he saw this
9 man leave 1908 Bronxdale Avenue and drive away, Pallatroni
10 came to the conclusion he said that this was a ruse and a
11 device designed to possibly lead the surveillance agents
12 away from the narcotics transactions. That is his testimony.

13 I submit that if it can be shown that Mr.
14 Pallatroni knew in fact that that car he was supposedly being
15 tricked by belonged to Murray Richmond, an attorney, that
16 conclusion of his is suspect.

17 THE COURT: That is rather ridiculous, Mr. Fisher,
18 but I think it is also premature. The Court holds Mr.
19 Richmond in high regard. Mr. Richmond has appeared before
20 me in cases but by the same token if the police officer
21 thought that a ruse was being perpetrated I don't think he
22 would be very impressed by the fact that the car being used
23 in the purported ruse belonged to an attorney, do you?

24 MR. FISHER: Well, your Honor, most respectfully --

25 THE COURT: I say nothing derogatory of Mr. Richmond.

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He couldn't be committing a ruse?

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MR. FISHER: If it was an unimportant point I question then why Mr. Pallatroni's testimony was the way it was at the first hearing.

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THE COURT: Who is the first witness, Mr. Beller?

7

MR. BELLER: Mr. Reilly.

8

THE COURT: Do you want to respond to this question? There has been no motion to quash anything.

10

MR. BELLER: I was going to raise the issue, your Honor.

11

12

The government position with respect to all the items listed in the subpoena and if the Court doesn't have one perhaps you might have an extra copy? I have a marked one but I will hand it up.

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16

The last request is for the search warrant and the government searched for that affidavit with respect to the search warrant during the Tramunti trial and was unable to locate it.

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We searched again with respect to this motion and were unable to locate it. It relates to a statement made by Detective Spurdis who will not be called by the government certainly at this hearing.

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With respect to all the remaining entries, your Honor, it is the government's position that it is well

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2 settled, we believe, that the subpoena power under 17C
3 cannot really be used as a means of additional discovery,
4 avoiding 16B and the Jencks Act and all the requests in
5 that subpoena are for government memoranda, internal
6 government memoranda with respect to the investigation.

7 THE COURT: The radio log isn't an internal govern-
8 ment memorandum if Mr. Fisher is correct, as I believe
9 he must be, in stating that any person, including the
10 government agency making these transmissions, has to keep
11 a log.

12 It is no different than the log of a vessel
13 and if there is something on the log which is confidential
14 or which the public interest would be adversely affected
15 by releasing, I might inspect it in camera but this is
16 a log required to be kept by statute or by rule, rising
17 to the force of a statute, and if that log will corroborate
18 or disprove testimony which is important, then he ought to
19 have access to it.

20 MR. BELLER: Well, I was going to get to that.

21 THE COURT: That is all he is asking for this
22 morning is the log.

23 MR. BELLER: We would move to quash the balance
24 of the subpoena as well but with respect to the log, we
25 haven't been shown any such rule or regulation and perhaps

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it may exist but, in essence, my reading of the record shows no discrepancy between Agent Pallatroni and Reilly.

Pallatroni indicated in his testimony that he called prior to the arrest but he simply wasn't given the benefit of the information.

THE COURT: I think I should hear the testimony and cross-examination of Mr. Reilly. Possibly that of Mr. Pallatroni before making a definitive ruling.

But my inclination is of the view that if Mr. Fisher represents the log is required to be maintained by rule of the Federal Communications Commission, and if the log contains relevant entries which bear upon the testimony and direct examination or cross-examination of Mr. Reilly, very likely I ought to direct you to produce it.

If you have a bona fide reason for resisting its production which has nothing to do with what it is sought for, then if need be I would inspect it in camera. But it seems to me if it is a public record of that sort, required to be kept, which may corroborate an essential element of someone's testimony or disprove it, then we ought to have access to it.

MR. BELLER: I want to be sure to distinguish between the log and anything else.

THE COURT: All he is asking for is the log.

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2 MR. BELLER: If there is such a regulation
3 the government would provide it.

4 THE COURT: It ought to be available before
5 the cross-examination of the person making the transmission.

6 MR. BELLER: Similarly the government position
7 is if Pallatroni made a written statement as to his where-
8 abouts at a certain time this would be 3500 material,
9 which is not available at a suppression hearing.

10 THE COURT: It may not be but my experience with
11 your office has been that it is usually produced at a
12 suppression hearing as a matter of courtesy to the court
13 and adversaries and in the interest of justice.

14 It would be most unfortunate if a ruling were
15 made in a hearing and during the trial when it is 3500
16 material and it is dumped on defense counsel's desk, they
17 come to the court with it with an indication that from
18 the 3500 exhibits that a witness on the suppression hearing
19 gave an incomplete answer or possibly an untruthful answer.
20 Such a contention would be against the interest of justice.

21 MR. BELLER: I believe though -- I'm relatively
22 new in the office -- that the practice in suppression
23 hearings as in a trial is to have an almost complete dis-
24 covery. It is not a case where there has not already
25 been a hearing on this matter, where the issue is by and

1 large determined and where our adversaries have absolutely
2 complete discovery by way of a prior hearing.
3

4 THE COURT: I can't rely on the prior hearing until
5 I have a stipulation to that.

6 MR. FISHER: I don't accept the statement of the
7 government, your Honor.

8 The information that we have subpoenaed -- first
9 let me say this if I may, your Honor.

10 With regard to the log the government agent at
11 the last proceeding specifically denied even the existence
12 of such a log.

13 MR. BELLER: That is not true.

14 MR. FISHER: Agent Reed testified and I will cite
15 the page to the government.

16 THE COURT: I am inclined to think it should
17 be produced, Mr. Fisher, and I think this whole discussion
18 is premature.

19 I think you would be entitled to know and plan
20 your cross-examination of Mr. Reilly with the log. If
21 there is something in the log which ought not be produced
22 I will entertain an application to inspect it in camera
23 but to the extent it bears on whether transmissions were
24 or were not made, I think you are entitled to that informa-
25 tion.

2 MR. FISHER: Thank you, your Honor.

3 One other thing if I might, your Honor. We
4 have subpoenaed the informant's file of Stanley Garland
5 in anticipation of testimony by Agent Pallatroni that he
6 received certain information regarding Vincent Papa from
7 an informant named Stanley Garland.

8 I would ask in this matter that the entire
9 informant's file be turned over to us but I realize that
10 I would be flying in the face of strong opposition from
11 both the government and possibly even your Honor.

12 What we really are interested in, your Honor,
13 is evidence that might be in the file which would tend to
14 establish the unreliability of that informant as of
15 February 3, 1972, and, for that, your Honor, I think I
16 would be willing to accept an in camera presentation to
17 your Honor so that your Honor may review that file yourself
18 and determine from that whether or not there is anything
19 in there suggesting to a reasonable observer the unreliability
20 of the informant.

21 THE COURT: Isn't that to be tested by the
22 state of mind of the person acting upon the informant's
23 representations? In other words, it is possible that a
24 person or Garland or anyone may have standing with a
25 particular law enforcement officer as a reliable informant

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2 whereas another person may find him to be totally
3 unreliable. It is subjective.

4 If he genuinely believed that the man was
5 a reliable informant and had reasonable ground to believe
6 that because of prior cases the man made or prior data
7 which the man had given, he can represent him as a reliable
8 informant who told him something even though the file
9 may have derogatory information which was generated with
10 respect to the same informant by some other law enforcement
11 official who found him useless.

12 MR. FISHER: Absolutely right, your Honor.

13 THE COURT: We are a little off the track and
14 we ought to take the testimony.

15 MR. FISHER: I may just state that Agent Pallatrone
16 testified at the last proceeding that he reviewed the in-
17 formant's file.

18 THE COURT: Before the warrant?

19 MR. FISHER: The testimony was last time before
20 May 15, 1972. I think it would be clear that he reviewed
21 it even before February 3, 1972.

22 Also I am advised that there is a practice and
23 procedure in the Drug Enforcement Agency and the then
24 Bureau of Narcotics and Dangerous Drugs that if there is
25 an official determination that an informer is unreliable,

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2 a circular is distributed to every agent in the Bureau
3 with respect to that fact.

b3 4 If in fact there is a circular of that kind
5 in the file dated before February 3, 1972, I would strongly
6 suspect that in fact Mr. Pallatroni was indeed aware of
7 this negative information about the informant. I don't
8 know if it is there, I am only asking your Honor to look
9 and see.

10 THE COURT: I don't think we have to resolve this
11 this instant.

12 MR. BELLER: George Reilly.

13
14 G E O R G E R E I L L Y, called as a witness on behalf
15 of the government, being first duly sworn, testified
16 as follows:
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Reilly-direct

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DIRECT EXAMINATION

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BY MR. BELLER:

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Q Is it Officer Reilly?

5

A That is correct, Police Officer Reilly.

6

Q How are you presently employed?

7

A I am presently employed by the New York City

8

Police Department.

9

Q How long have you been employed by the Police

10

Department?

11

A Six years.

12

Q What are your duties at the present time?

13

A I am presently assigned to the Unified Intelligence

14

Division of the Drug Enforcement Administration.

15

Q Were you on duty on February 2, 1972?

16

A I was.

17

Q I'm sorry?

18

A Yes, I was.

19

Q What was your assignment on that day?

20

A On February 2nd or February 3rd?

21

Q Around February of 1972 to which administration

22

were you assigned?

23

A I was assigned to the New York Joint Task Force

24

of the Bureau of Narcotics and Dangerous Drugs.

25

Q What is the responsibility of the Task Force?

1 Explain to the court what the Task Force is.

2 A The Task Force conducts investigations on
3 middle and upper echelon narcotics violations.

4 Q How long had you been assigned to the Task Force
5 at that date?

6 A Six months.

7 Q Prior to these six months what was your employment?

8 A Prior to these six months I was at the 42nd
9 Precinct in the Bronx.

10 Q Will you tell the court how long you had been
11 a law enforcement official up until February 3, 1972?

12 A I had prior police experience with the New York
13 City Police Department, approximately four years, three
14 and a half years.

15 Q Where were you located? Where were your head-
16 quarters?

17 A The Task Force was located at 201 Varick Street,
18 New York, New York.

19 Q Were you on duty on that day?

20 A On February 3rd?

21 Q Were you working on February 3rd?

22 A I was.

23 Q Did you report to 201 Varick Street?

24 A I did.

Q At what time?

A Approximately 4 P.M.

Q What happened there?

A Our group supervisor, Pallatroni, conducted a meeting of all the members of the group, Group 2.

Q How many members are in the group?

A Approximately 13 members, but all weren't present. Approximately eight of us.

Q Were you given instructions as to how you should proceed with your duties that evening?

A Yes, I was.

Q What were those instructions?

A I was instructed to go along with Detective John Spurdis and attempt to identify a John Doe No. 3 in the Frank Facciono case.

Q What was the Facciono case, briefly?

A Briefly we had two eighth kilogram buys from Mr. Facciono.

THE COURT: Two different one-eighth kilogram buys?

THE WITNESS: Yes, sir, of heroin.

BY MR. BELLER:

Q Where had these buys taken place?

A I had not been on the Task Force previously.

I believe it was in the Bronx on both occasions.

Q Pardon me?

A I believe it was in the Bronx on both occasions.

Q How was John Doe 3 connected with the Faccioni investigation?

A John Doe No. 3 on September 2nd of 1971 had engaged Frank Facciono in conversation at the Cottage Inn Bar.

Q How did you know that?

A Detective Spurdis was in the bar making observations.

Q How did you know what Detective Spurdis was doing?

A Detective Spurdis related this to me when he left the bar.

Q What else did he relate to you?

A That Mr. Facciono asked John Doe No. 3 if he could get another eighth.

Q What did you understand about getting another eighth?

A An eighth kilogram of heroin.

Q What else did Spurdis tell you?

A That Facciono handed John Doe No. 3 a brown paper bag, and after that John Doe No. 3 and Mr. Facciono

1 slh

Reilly-direct

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2 went into the kitchen where Detective Spurdis heard money
3 crumpling--

4 THE COURT: Well --

5 THE WITNESS: Well, paper crumpling, I'm sorry.

6 BY MR. BELLER:

7 Q Did Detective Spurdis characterize the sound?
8 Did he draw any conclusion from the sound that he heard?

9 A Yes, he felt there was money being counted.

10 Q He told you that?

11 A Yes.

12 Q You mentioned that they went into the kitchen.
13 Is that a kitchen in the bar?

14 A It is in the back, I believe, I don't know.

15 Q What happened next on the evening of September 2,
16 1971?

17 A Some time after Detective Spurdis left the bar,
18 we observed an unidentified male, who was subsequently
19 identified as George Rossi, leave the Cottage Inn Bar.

20 Some time later we followed Mr. Facciono to
21 White Plains Road and Lydig Avenue in the Bronx.

22 Q When you say followed him, where did you follow
23 him from?

24 A From the Cottage Inn Bar, and George Rossi handed
25 Frank Facciono a brown paper bag at that location.

Q Did you observe that?

A Yes, I did.

Q What happened next?

A We followed Mr. Facciono to the area around Carpenter Avenue in the Bronx where we met with another man by the name of James Cursi.

Q At that time was Mr. Rossi still with Mr. Facciono?

A No, he was not.

Q Go ahead.

A There was a package exchanged at the Carpenter Avenue location.

Q When you say there was a package, what do you mean by that? Who exchanged what with whom?

A Special Agent Donald Stern of my group--

Q Just what you know. Who exchanged what with whom?

A Mr. Facciono handed Mr. Cursi a package, a brown paper bag.

Q What happened next?

A We followed Mr. Cursi to Yonkers where we placed him under arrest after finding an eighth kilogram of heroin in a brown paper bag under the front seat.

Q Was Facciono with him at the time?

A No, he wasn't.

1 slh

Reilly-direct

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2 Q Was Facciono arrested on that day?

3 A No, he wasn't.

4 Q To the best of your knowledge was he arrested
5 subsequently?

6 A Yes, he was.

7 Q Did you draw any conclusions from that evening's
8 activity?

9 A Yes, that Mr. Facciono had negotiated in the
10 Cottage Inn Bar with John Doe No. 3 for the purchase of
11 this eighth kilo of heroin.

12 Q When you say this eighth kilo, what do you mean?

13 A The eighth kilogram of heroin that was taken
14 from James Cursi.

15 Q Now, going off to February 3, 1972, when you were
16 instructed to look for John Doe No. 3 in the Facciono
17 investigation, what did you do? Where did you go?

18 A We went to various locations in the Bronx,
19 Spencer Drive in the Country Club Road section; the
20 Cottage Inn Bar in the Van Ness section, and 1908 Bronxdale
21 Avenue.

22 Q Did you take up surveillance at 1908 Bronxdale
23 Avenue?

24 A Yes, we did.

25 Q Had you ever been there before on surveillance?

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A We had, many times.

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Q Approximately how many times?

4

A I would say 20 times.

5

6

Q What kinds of surveillance were you doing in
Bronxdale Avenue?

7

A We were attempting to identify John Doe No. 3.

8

9

Q So you did surveillance in the past at that
address you mentioned in the Facciono investigation with
John Doe No. 3?

10

11

A Yes.

12

13

Q How far is 1908 Bronxdale Avenue from the Cottage
Inn Bar?

14

A It is four city blocks.

15

16

Q How is the Bronxdale address related to the
Facciono investigation?

17

18

A Facciono had been seen engaged in conversations
with a male in a car that was registered to a Genevieve
Patalano of 1908 Bronxdale Avenue.

19

20

21

Q When you say that Facciono was observed talking
to a male, where had he been seen talking to a male?

22

23

A In front of the Cottage Inn Bar.

24

25

Q Were there any other connections between 1908
Bronxdale Avenue and the Cottage Inn Bar with the Facciono
investigation?

1 slh
2 A Yes. In October of 1971 I had arrested Joseph
3 DiBenedetto, the owner of the Cottage Inn Bar upon his
4 leaving 1908 Bronxdale Avenue and getting into a stolen
5 vehicle.

6 When I arrested him and brought him to the 43rd
7 Precinct he told me he lived in 1908 Bronxdale Avenue.

8 Q Did you inquire as to whether he did live at
9 that address?

10 A Yes, I did, and he did not.

11 Q Approximately what time did you take up your
12 surveillance at 1908 Bronxdale Avenue?

13 A It was at about 8 P.M.

14 Q Would you describe the premises at 1908 Bronxdale
15 Avenue?

16 A Yes. It was a private dwelling, a ground floor,
17 parlor floor, top floor.

18 Q Three floors?

19 A I believe there is, yes.

20 Q Is there a basement?

21 A Yes.

22 Q Is that one of the floors or is that an additional
23 floor?

24 A That is one of the floors.

25 Q A basement and two floors?

1
2 A Right.

3 Q Now, what else is in the neighborhood, can you
4 tell the court? Just describe generally what is in the
5 neighborhood.

6 A It is basically private homes.

7 Q What kind of street is Bronxdale Avenue? How
8 many lanes?

9 A It is a four-lane street.

10 Q Could you estimate the width of the street?

11 A I would say about 20, 25 feet.

12 Q Is there parking on each side?

13 A Yes, there is.

14 Q And four lanes of highway?

15 A Right.

16 Q Now, where did you park when you took up sur-
17 veillance?

18 A About a hundred feet south of 1908 Bronxdale
19 Avenue on the same side of the street.

20 Q Let me go back just one second.
21 You said the width of Bronxdale Avenue is about
22 25 feet.

23 Will you indicate from the place where you are
24 sitting within this courtroom approximately how wide
25 Bronxdale Avenue is?

1 slh
2 A Approximately from the first bench to the back
3 wall.

4 Q Now, when you took up surveillance how far
5 were you from 1908 Bronxdale Avenue?

6 A There are three houses next to 1908 Bronxdale
7 Avenue, and then there is an intersection, and we were right
8 on the corner on the other side of the intersection. I
9 would estimate a hundred feet.

10 Q Will you tell the court what you observed
11 during the surveillance?

12 A Well, about 8:30 an older man came out of 1908
13 Bronxdale Avenue and got into a car and drove away; and
14 at about 8:45 a small green Pontiac pulled up in front
15 of 1908 Bronxdale Avenue, and a male got out carrying
16 a suitcase and walked into 1908 Bronxdale Avenue.

17 Q Were you able to see him?

18 A I could make out what he looked like. I didn't
19 know who he was.

20 Q Were you able to identify him?

21 MR. FISHER: I didn't hear that.

22 THE COURT: He said he could make out what he
23 looked like.

24 Q You were not able to identify him at the time?

25 A No. I didn't know who he was.

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slh

Reilly-direct

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THE COURT: You didn't know who he was. All right.

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Q Did you subsequently identify him?

4

A Yes, I did.

5

Q Who was he?

6

A He was Joseph DiNapoli.

7

Q What did DiNapoli do when you got out of the

8

car?

9

A He walked into 1908 Bronxdale Avenue.

10

Q Was he carrying anything?

11

A Yes, a suitcase.

12

Q Will you describe to the court how he walked

13

from his car to the premises?

14

A He walked normally like a man would carrying

15

a suitcase.

16

Q What happened next?

17

A The Pontiac drove north a few feet and made

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a U-turn for parking space on the opposite side of Bronxdale

19

Avenue.

20

Q What happened next?

21

A Detective Spurdis and I followed the car up

22

and made a U-turn behind him. When he got into his parking

23

place he got out of the car, we pulled up and double parked

24

next to him. By this time he was in the middle of the street

25

by the yellow line.

1 slh
2 Q When you say by this time he was in the middle
3 of the street, will you tell the court what did you see
4 the driver of the car do?

5 A We stopped our vehicle and looked out at the
6 man who had just gotten out of the car.

7 Q How did he get to the middle of the street?

8 A On foot -- I'm sorry, I don't understand.

9 Q I am asking you to tell the court how he got
10 from the car to the middle of the street. Did he get out
11 of the car?

12 A Yes.

13 Q And did he start walking across the street?

14 A Yes.

15 Q What happened?

16 A We pulled up, double parked next to him and
17 looked at him, and at which time he turned around and
18 looked into the car.

19 THE COURT: Looked into what car?

20 THE WITNESS: Our car.

21 Q Who was driving?

22 A Detective Spurdis.

23 Q You were in the passenger's seat?

24 A I was.

25 Q Did you recognize the man who looked into the car?

b3 2

A Yes.

3

Q Who was it?

4

A Vincent Papa.

5

Q Had you seen Vincent Papa before, or some photograph of Vincent Papa?

7

A Yes, I had.

8

THE COURT: Which? Did you see him or you had seen photographs?

10

THE WITNESS: I had seen photographs.

11

Q Where did you see photographs of Vincent Papa?

12

A We had an active case on Mr. Papa in Group 2 of the Task Force, my group.

14

Q What happened next?

15

A Mr. Papa continued into 1908 Bronxdale Avenue and we resumed our surveillance behind.

17

Q Did you make any effort to communicate information you just learned to your supervisor?

19

A Yes, sir. I immediately called group supervisor Pallatroni and told him we had VIP at 1908 Bronxdale Avenue with a suitcase.

22

Q What did you mean by VIP?

23

A Mr. Papa owns a tire store on 39th Street and Greanpoint Avenue called VIP Tires.

24

25

Q Were you joined by supervisor Pallatroni

subsequently?

A Yes, about five minutes later.

Q What happened? Are we now approximately what, 8:50, 8:55?

A Approximately.

Q What happened when Pallatroni arrived?

A Detective Sturdis got out of the car that we were sitting in and went over to Special Agent Pallatroni's vehicle and explained to him exactly what had happened.

Q Then what happened?

A After that there was some woman left the house, got into a car and drove away and returned some time later, about ten minutes--

Q Let me interrupt you.

Did Spurdis return to the vehicle?

A Yes, Spurdis returned to my vehicle.

Q You were now conducting surveillance from the corner, three houses and an intersection away from 1908 Bronxdale Avenue?

A That is correct.

Q Did you see where Pallatroni went in his car?

THE COURT: You know, these questions are quite leading in nature, and while there is no jury here I think you would do much better if you framed ordinary questions.

I will let him answer the last one.

THE WITNESS: I am sorry?

BY MR. BELLER:

Q What did Pallatroni do?

A He got back into his vehicle and we kept in communication via the radio in the cars.

Q What did you next observe?

A About 9 o'clock three women left 1908 Bronxdale Avenue and drove away, and they returned about ten minutes later.

Q Did you see anything else?

A Yes, then a lone male left 1908 Bronxdale Avenue, got into a car and drove away.

He was followed by Special Agent Pallatroni.

Q What happened next?

A Two males left 1908 Bronxdale Avenue and got into separate vehicles and drove away.

Q Did you follow them?

A I did not.

Q And what happened next?

A About 9:30 Mr. Papa and Mr. DiNapoli came out of 1908 Bronxdale Avenue with the suitcase.

Q Did they come out together or separately?

A They came out together.

Q What did you see?

A I saw Mr. DiNapoli carry the suitcase, walk over to the green Pontiac, put the suitcase in the back seat and get in on the passenger's side.

Q Did you see Mr. Papa do anything?

A I'm sorry, he got in the driver's side, Mr. Papa did.

Q What did you see Mr. Papa do when he left the house?

A He walked straight to the vehicle.

Q Where was the vehicle parked at this time?

A It was across the street from 1908 Bronxdale Avenue.

Q Is that the vehicle in which they drove to that address?

A Yes, sir, it is.

THE COURT: They came together to the address in the same vehicle?

THE WITNESS: Yes, they did.

BY MR. BELLER:

Q What happened next that you observed? What did you do?

A Mr. Papa and Mr. DiNapoli's car pulled away from the curb and was driving south on Bronxdale Avenue.

Special Agent Pallatrone and Special Agent Reed were in the same car and got into Bronxdale Avenue behind them in order to follow them.

Q Did you communicate at all to Agent Pallatrone what you had seen?

A Yes, I did.

Q What did you say?

A I said they are out of the house with a suitcase. It appears to be heavy.

Q How did you make these communications?

A Via radio in the vehicles.

Q What did you do when you saw the Papa car start moving?

A After Special Agent Pallatrone pulled in behind Mr. Papa's car we made a U-turn and pulled in behind Special Agent Pallatrone's car.

Q Go ahead.

A A couple of blocks later Pete got off then and told us to take up surveillance immediately behind Mr. Papa's car.

When we got to the intersection of Castle Hill and East Tremont, group supervisor Pallatrone told us to take the car.

Q Approximately how far is the intersection of

Castle Hill and Tremont from 1908 Bronxdale Avenue?

A It is about eight blocks.

Q How long did it take you to get there?

A Two and a half minutes, three minutes.

Q Would you describe the weather conditions?

THE COURT: It took you three minutes to go eight blocks? You went eight blocks in three minutes?

THE WITNESS: About two or three minutes, yes, sir.

MR. LAIFER: I couldn't hear his response.

THE COURT: He said about two or three minutes.

BY MR. BELLER:

Q Were there any lights on that route?

A Yes, there were.

Q Did you stop for a light?

A At Castle Hill and East Tremont there was a light that was red.

THE COURT: That was the only light you had been stopped by in this trip?

THE WITNESS: Yes, it was.

BY MR. BELLER:

Q I think I asked you to describe the weather conditions on that evening?

A Yes. It was raining.

Q Was it raining the whole night?

1 slh
2 A It rained pretty near the whole night, yes.
3 Pretty hard too.

4 Q Now what happened after Agent Pallatroni told
5 you to take the car?

6 A We pulled up abreast of Mr. Papa's car, and
7 I put my shield up at the window and I told him to pull
8 the car over to the side.

9 At first he didn't.

10 I yelled it again, and he pulled over to the
11 side of Castle Hill and East Tremont.

12 Q Will you elaborate a little bit on that.
13 Did you open the window?

b4 14 A Yes, I did.

15 Q And what happened, exactly?

16 A I said, "Police. Pull the car over."

17 Q What did Mr. Papa do?

18 A He continued on at first.

19 Q Well, how far did he go?

20 A Approximately a car length. You know, it was
21 almost an immediate response, to say it again, "Police,
22 pull the car over."

23 Q Then he stopped?

24 A Yes.

25 Q Then what happened?

1 slh
2 A We pulled up in front of Mr. Papa's car,
3 Detective Spurdis and myself.

4 Mr. Papa had exited his car on the driver's
5 side and walked down to the sidewalk and came towards our
6 car and said, "What is the matter? What did I do?"

7 At which time Special Agent Pallatroni pulled
8 in behind Mr. Papa's car.

9 Q What did you do?

10 A I told him he was under arrest for violation
11 of the federal narcotics laws.

12 Q Did you proceed to secure Mr. Papa?

13 A Yes, I did.

14 Q Did you say anything to Mr. DiNapoli?

15 A Special Agent Pallatroni was taking him out of
16 his vehicle and was proceeding to search him.

17 Q Now, did there come a time when you had occasion
18 to examine the suitcase?

19 A There was.

20 Q And will you tell the court what happened with
21 respect to the suitcase?

22 A The suitcase contained money.

23 Q Did you see a suitcase at the location of the
24 arrest?

25 A I did.

Q Was there anything in the suitcase?

A Yes, money.

THE COURT: Where did you see it? Where was it located?

THE WITNESS: Detective Spurdis had taken it out of the back of Mr. Papa's car and laid it out on the sidewalk and opened it to see what was inside of it.

Q Did you look at the suitcase at that time?

A Yes, I did.

Q Did you see the suitcase subsequently that evening?

A Yes, I did.

MR. BELLER: I'm sorry. I neglected to mark this. This will be Government's Exhibit 1 for identification for the purposes of this hearing.

(Marked Government's Exhibit 1 for identification.)

MR. BELLER: Now, with the Court's permission I will leave this other tag on the suitcase. It is an exhibit in a previous case.

MR. FISHER: No objection.

THE COURT: What is the number in the previous case?

MR. BELLER: It is 98.

THE COURT: And the previous case is what case?

MR. BELLER: It is Tramunti.

THE COURT: United States v. Tramunti?

MR. BELLER: Yes, your Honor.

BY MR. BELLER:

Q Officer Reilly, have you ever seen that suitcase before?

A Yes, I have.

Q What is it? How can you recognize it?

A I have my initials on the inside flap.

Q Will you take a look and see?

A Yes, it has my initials, GR, and the date, 2/3/72.

Q What is that suitcase?

A This is the suitcase that contained \$967,450.

Q Is that the suitcase you saw Mr. DiNapoli bring into the house, or one that looks like it?

A It looked like it. I can't be sure that this is the same suitcase that went into the case.

Q Is it the suitcase that came out of the house?

A It is.

Q Is that the suitcase you put into the car?

A Yes.

MR. BELLER: Your Honor, at this time the government would offer Government's Exhibit 1 for identification in evidence.

MR. FISHER: No objection.

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2 THE COURT: For the purposes of this hearing
3 it is received.

xx 4 (Government's Exhibit 1 received in evidence.)

5 BY MR. BELLER:

6 Q Officer Reilly, at this time, with the Court's
7 permission I would like to ask you to show the Court how
8 you observed Mr. DiNapoli carrying the suitcase from his
9 car into the house.

10 THE COURT: Can't he describe it? Is there some-
11 thing significant about carrying the suitcase?

12 MR. BELLER: I think so, your Honor. The witness
13 has testified that he communicated to Agent --

14 THE COURT: You see, if he gives me some demon-
15 stration or walks up and down the courtroom, it does not
16 really add to my record here; I will see a man carrying
17 a suitcase.

18 MR. BELLER: Yes, your Honor, but --

19 THE COURT: Ask him if he can describe it, if
20 he saw it, and let him describe it, and then if we really
21 need a demonstration we will have one.

22 MR. BELLER: All right. I think he has described
23 it in part, and the only reason the government asked him
24 to do that is because he did communicate to Agent Pallatoni
25 that when the suitcase came out it appeared heavy, and the

government thinks Mr. Reilly ought to be able to show --

THE COURT: What did you see with respect to this suitcase that gave rise to an opinion on your part that it was heavy? What if anything?

THE WITNESS: It appeared to me that it was being carried with two hands, your Honor.

THE COURT: That is coming out of the house?

THE WITNESS: Yes.

THE COURT: And from the fact that the man was carrying it in two hands, you believe it must be heavy?

THE WITNESS: Yes.

BY MR. BELLER:

Q Was there anything else about the manner in which the suitcase was carried that led you to believe it was heavy?

A Well, the individual that was carrying it was a bit hunched --

MR. FISHER: I'm sorry, your Honor, I didn't hear it.

THE COURT: "He was a bit hunched."

MR. FISHER: Thank you.

BY MR. BELLER:

Q When the suitcase was carried into the premises of 1908 Bronxdale Avenue, did you observe how many hands

1 slh

Reilly-direct
cross

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2 were used to carry the suitcase?

3 A Just one. It was down at his side.

4 Q Was Mr. DiNapoli hunched over when he carried
5 the suitcase into the house?

6 A No, he wasn't.

7 THE COURT: How much does this money weigh? Is
8 that known?

9 Q Did you have occasion to weigh the suitcase?

10 A I believe it was weighed. I didn't weigh it,
11 but I believe it was weighed. I believe it was 40 pounds.

12 MR. BELLER: I have no further questions, your
13 Honor.

14 CROSS EXAMINATION

15 BY MR. FISHER:

16 Q Officer Reilly, prior to your testimony here
17 this morning did you have occasion to review any notes
18 or memoranda in connection with your testimony?

19 A Yes, I have.

20 Q And precisely, if you can, tell us what those
21 were?

22 A I reviewed the September 2nd file at the Cottage
23 Inn Bar which we went over before, and the arrest of
24 February 3rd.

25 Q The arrest report?

1
2 A Not the arrest report itself, no.

3 Q What specifically did you review?

5 4 A The surveillance of 1908 Bronxdale Avenue.

5 Q Was it in a written form, sir?

6 A No, it wasn't.

7 Q In other words, you reviewed it verbally with
8 some people?

9 A Yes.

10 Q With respect to things which were written, what
11 if anything did you review prior to your testimony here?

12 A I read nothing.

13 Q Nothing?

14 A Nothing.

15 Q With whom, then, did you discuss your recollection
16 of these events prior to your testimony?

17 A With Mr. Beller.

18 Q And what about Mr. Pallatroni?

19 A No.

20 Q Or Mr. Reed?

21 A No.

22 Q Now do you recall, sir, ever signing an affidavit
23 with regard to your activities on the night of February 3,
24 1972, for Mr. Borden?

25 A I do not.

1 slh
2 Q Now, you are familiar with the fact, are you
3 not, that on the night of February 3rd and the following
4 morning hours of February 4th a search warrant was, in
5 fact, executed on the premises of 1908 Bronxdale Avenue,
6 is that right?

7 A That is correct.

8 Q Prior to the execution of that search warrant
9 you and Mr. Pallatroni and Mr. Reed and Mr. Spurdis met
10 together at 201 Varick Street, is that correct?

11 A That is right.

12 THE COURT: Is this before or after the arrest
13 and seizure of the money?

14 Q This, of course, was after, immediately after
15 the seizure of approximately \$1,000,000, is that right?

16 MR. BELLER: Your Honor, I didn't object because
17 I thought he was referring to the prior meeting, but if
18 we are going into matters subsequent to the arrest, I
19 object.

20 THE COURT: I thought it was subsequent to the
21 arrest.

22 Of course, you can't rely on that for probable
23 cause, anything he found subsequent to the arrest.

24 What is the issue here?

25 MR. FISHER: I am getting to the contents of the

1 search warrant which would reflect, your Honor, what
2 the witnesses say happened before the arrest, under oath.

3 THE COURT: If this witness made a written statement
4 he may be confronted with it. You don't have to go into
5 the search after the arrest.
6

7 MR. FISHER: No, I didn't intend to, your Honor.

8 THE COURT: All right.

9 BY MR. FISHER:

10 Q Now, during the discussion had immediately after
11 the seizure of the approximately \$1,000,000, an Assistant
12 U.S. Attorney named Tierney came over, is that right?

13 A Yes --

14 MR. BELLER: Your Honor, I object.

15 Your Honor, when I object will you instruct the
16 witness not to answer until I have stated my objection
17 and the Court has ruled?

18 THE COURT: Yes.

19 When there is an objection by any attorney give
20 me an opportunity to rule on the question before you answer.

21 THE WITNESS: All right.

22 THE COURT: Now, what is the ground of your ob-
23 jection?

24 MR. BELLER: I don't see the relevance of anything
25 that happened subsequent to the arrest.

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2 THE COURT: Unless he made a --

3 MR. FISHER: That is what I am getting at.

4 THE COURT: Then confront him with it. Let us
5 not beat around the bush.

6 MR. FISHER: Your Honor, the point is this --
7 can I make the application at the side bar?

8 THE COURT: No. Ask the man if he had any dis-
9 cussion with Assistant United States Attorney Tierney in
10 which he said to Mr. Tierney in substance whatever he said.

11 MR. FISHER: Unfortunately, your Honor, that
12 would normally be the proper procedure. In this rare
13 instance for some strange reason the affidavit in support
14 of the search warrant is missing. The government does
15 not have it.

16 THE COURT: From federal files?

17 MR. FISHER: Yes, your Honor.

18 We have subpoenaed it every which way we know--

19 THE COURT: You can ask the witness.

20 MR. BELLER: Your Honor, that is in an affidavit
21 submitted by Mr. Spurdis, not this witness.

22 MR. FISHER: Approved by group supervisor Peter
23 Pallatroni who went to Judge Gurfein's home at 1 o'clock
24 in the morning to have it signed, your Honor.

25 THE COURT: I am glad it wasn't my home.

MR. FISHER: I think your Honor lives too far away.

THE COURT: Let us not go too quickly with this. If it is nothing the witness did, even though it is missing-- and I am certainly surprised to learn it is missing --

MR. FISHER: But this is why --

THE COURT: But you see if he didn't do it and if he didn't go to Judge Gurfein's home at 1 o'clock in the morning, then it is not a proper basis for impeachment by cross-examination.

MR. FISHER: Unless, of course, he discussed the contents of the search warrant--

THE COURT: Well, all right, you may ask whether he had any discussions.

MR. FISHER: That is all I am doing.

THE COURT: I didn't really think you were, Mr. Fisher.

MR. FISHER: I'm sorry, I was trying to get to it.

THE COURT: All right, let's get to it.

BY MR. FISHER:

Q Let's get there, Officer Reilly.

A Okay.

Q With regard to the affidavit in support of the search affidavit that was ultimately prepared and executed

1 slh
2 by Mr. Spurdis-- he signed the affidavit -- were there,
3 in fact, not discussions between the four of you police
4 officers or federal agents with regard to the contents of
5 that affidavit?

6 A No, it was strictly Special Agent Pallatroni
7 and Mr. Spurdis.

8 Q You made no contribution whatever--

9 A No.

10 Q -- to the contents of that search warrant, is
11 that right?

12 A That is right.

13 Q Did there ever come a time when you and Mr.
14 Spurdis and Mr. Pallatroni discussed the possibility that
15 in fact you gentlemen had seen two suitcases that evening?

16 A We never did, no.

17 Q Do you recall, sir, reading the affidavit at
18 any time?

19 MR. BELLER: Your Honor, I really object to
20 continuing this line.

21 THE COURT: Well, if he read it I will let him
22 testify as to whether he read it.

23 A I probably did. I don't recall, but I probably
24 did.

25 Q In view of the fact that we don't have the

1 affidavit available to us, can you tell us whether or not
2 you recall that in that affidavit it is stated that one
3 kind of suitcase was --

4
5 MR. BELLER: I object.

6 MR. FISHER: I didn't finish the question.

7 THE COURT: You have to let him finish the
8 question before I hear your objection, and Mr. Reilly knows
9 he is not to answer until I rule.

10 Frame a new question, Mr. Fisher.

11 MR. FISHER: Yes, your Honor.

12 BY MR. FISHER:

13 Q Having probably, as you say, read the affidavit
14 before--

15 THE COURT: No, not a summation. Frame a new
16 question.

17 Q Did you read in that affidavit in support of
18 the search warrant anything in there in substance to the
19 effect that a different suitcase was observed leaving 1908
20 Bronxdale Avenue than the one that was observed going into
21 it?

22 MR. BELLER: I object, your Honor.

23 THE COURT: Overruled.

24 You can answer it yes or no.

25 A No, I did not.

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Q Now, sir, you told us that you worked at a particular police precinct in the Bronx, is that right?

A Correct.

Q And you have been in the general area of 1908 Bronxdale Avenue on a number of occasions, isn't that right?

A That is true.

Q Not only with regard to the events that you claim led up to the arrest but for other reasons, isn't that right?

A Right.

Q And you're totally familiar with that geographical area, correct?

A I am not an expert but I have been up there.

Q Tell us how you proceeded to the Bronx River Parkway northbound from 1908 Bronxdale Avenue?

MR. BELLER: I object. He said he is not an expert.

THE COURT: I suppose I will have to take it subject to connection. There has to be some reasonable latitude in these matters.

I don't know how relevant it is, but I will let him tell us.

THE WITNESS: Could you repeat the question?

MR. FISHER: Sure.

Q If you were at 1908 Bronxdale Avenue, sir, what route would you take to get to the Bronx River Parkway

northbound?

A I would probably go east on Morris Park Avenue to the end of the elevated structure and make a left and go to Roosevelt Avenue. It is right there.

Q Then you would make a loop, wouldn't you?

A It all depends. If you were going northbound you wouldn't make a loop.

Q Isn't there a loop there?

A Only at the Cross Bronx Expressway.

Q Only at the Cross Bronx Expressway?

A Yes.

Q One other thing --

THE COURT: Let's go to something else. If you want to introduce a map in evidence I will take the map, but let's not get this witness' idea of how best to travel.

MR. FISHER: I just happen to have one handy.

THE COURT: People can differ as to how best to travel.

MR. FISHER: May this be marked as Defendant Papa's Exhibit A for identification.

THE COURT: Yes.

(Marked Defendant Papa's Exhibit A for identification.)

MR. FISHER: May I confer with government counsel

1
2 for a moment?

3 THE COURT: Certainly.

4 (Mr. Fisher confers with Mr. Beller off the
5 record.)

6 MR. FISHER: If your Honor please, I would like
7 to represent to the Court at this time that Defendants'
8 Exhibit A is a blowup of a street map obtained by us under
9 New York City Department of Maps.

10 THE COURT: I will certainly accept that repre-
11 sentation for this hearing.

12 MR. FISHER: Thank you.

13 THE COURT: If you get to trial and you are going
14 to use it, then you will either have to get a stipulation
15 from the government or lay a proper foundation.

16 Now, is this proper cross-examination that you are
17 going into now?

18 MR. FISHER: Well, quite candidly, no; but may
19 I say this, it would become quite proper at a later point
20 in this proceeding, and it would just involve recalling
21 Mr. Reilly.

22 MR. BELLER: We will have Mr. Reilly available.

23 THE COURT: Finish your cross-examination, and
24 if it is necessary to call Mr. Reilly later about how to
25 get to the Bronx River Parkway northbound, I will take that

1 slh

Reilly-cross

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2 at the proper time.

3 MR. FISHER: Yes, your Honor.

4 THE COURT: On the representation that the govern-
5 ment will have him here.

6 Is that so, Mr. Beller?

7 MR. BELLER: Yes.

8 BY MR. FISHER:

9 Q Now, Mr. Reilly, you testified that it was raining
10 that whole evening February 3, 1972, is that right?

11 A Yes.

12 Q The fact is it was pouring, wasn't it?

13 A At times it was pouring, yes.

14 Q Very, very heavily, wasn't it?

15 A Yes.

16 Q Although it was pouring at the time, you observed
17 this 1968 Pontiac drive up to the vicinity of 1908
18 Bronxdale Avenue, isn't that right?

19 A That is right.

20 Q And at the point in time when you first saw
21 this person you say you recognized as Vincent Papa, you
22 were in the passenger seat of the car, is that right?

23 A That is right.

24 Q And you were pointing southbound on Bronxdale
25 Avenue, isn't that right?

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Reilly-cross

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A Yes, right.

Q He was about laterally horizontal with you in terms of a line through Mr. Spurdis and Mr. Papa, isn't that right?

A That is right.

Q He was at the side window of the car, isn't that right?

A That is right.

Q And, of course, your car didn't have windshield wipers on the side window, isn't that right?

A No. The window was down.

Q Mr. Spurdis then lowered the window, isn't that right?

A Yes.

Q And he stared, did he not, right out at Mr. Papa?

A Yes.

Q And is it not a fact that Mr. Papa started right back at home?

A Yes, it is.

Q Right?

A Yes.

THE COURT: You saw this?

THE WITNESS: Yes.

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Reilly-cross

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Q And then, of course, Mr. Papa you say entered
1908 Bronxdale Avenue?

A Right.

Q And then you say that you resumed your position
of surveillance?

A Right.

Q On the same side of the same street of 1908
Bronxdale Avenue, is that right?

A Well, there is an intersection between. It is
the same side as 1908 Bronxdale Avenue.

MR. FISHER: May this be marked as Defendants'
Exhibit B for identification for the purposes of the hearing
your Honor?

THE COURT: Mark it for the purposes of the hearing
(Marked Defendants' Exhibit B for identification.)

MR. FISHER: I would make the same representation,
your Honor, with regard to Defendants' Exhibit B.

THE COURT: The representation is all right, but
if you get to trial we are not going to use these things
unless you will lay a proper foundation beforehand.

MR. FISHER: Yes, your Honor.

BY MR. FISHER:

Q Showing you what has been marked as Defendants'
Exhibit B for identification, sir, I ask you whether or

not the intersection depicted here as Rhineland and
Bronxdale fairly represents in terms of the streets the
area we have been talking about?

A Yes.

THE COURT: Where is Rhineland?

MR. FISHER: Rhineland is right here, your
Honor (indicating).

(Mr. Fisher marks on exhibit.)

THE COURT: You are going to spoil it. If you
need it any more it won't do any good.

MR. FISHER: We have more, your Honor.

THE COURT: The same or different?

MR. FISHER: The same.

Q Now, would you put an A for 1908 Bronxdale
Avenue, please, Mr. Reilly?

A (Witness marks)

Q Would you put a B where you were, where you
and Mr. Spurdis were in your car after you made that U-turn
and took up another point of surveillance?

A (Witness marks)

Q In other words, you crossed Rhineland, is
that right?

A Yes.

THE COURT: Where is north, Mr. Fisher?

MR. FISHER: North is this way (indicating).

Q Is that correct, Officer Reilly?

A Yes.

Q And south is this way (indicating)?

A Yes.

Q Now, having had this staring contest, if you will, with Mr. Papa in the middle of the night in the rain, it became a matter of concern to you and Mr. Spurdis, did it not, that you had been spotted?

A Yes.

THE COURT: As far as you were concerned?

THE WITNESS: Yes.

Q And this, of course, was a matter of some importance to someone such as yourself who was trying to observe possible criminal activity, is that right?

A That is right.

Q So when you took up this position of surveillance you did it in a way that would carefully conceal your presence there, isn't that right?

A Yes.

Q So, of course, you turned your motor off, isn't that right?

A Yes.

Q And your windshield wipers?

1
2 A Yes.

3 Q You have indicated that at one point Mr.
4 Pallatroni arrived, isn't that right?

5 A Right.

6 Q And Mr. Spurdis exited your car and spoke
7 with Mr. Pallatroni?

8 A Right.

9 Q And you were not able from where you were parked
10 to see Mr. Spurdis speaking to Mr. Pallatroni, were you?

11 A No, I was not.

12 Q But do you recall Mr. Spurdis was dripping
13 wet when he returned to your car ?

14 A I do.

15 Q Do you recall whether or not he complained
16 about having had to go stand in the rain while he was
17 talking to Pallatroni?

18 A No, he complained about having to go at the
19 back of the house.

20 Q At Pallatroni's direction?

21 A Right.

22 MR. FISHER: May this be marked as Defendants'
23 Exhibit C for identification for the purposes of this
24 hearing, your Honor?

25 THE COURT: Yes.

1
2 MR. FISHER: In fact, to save time, may each of
3 these receive a separate exhibit number?

4 THE COURT: Yes.

5 MR. FISHER: Thank you, your Honor.

6 (Marked Defendants' Exhibits C, D, E, F, G, H, I
xx7 and J for identification.)

8 Q Showing you what has been marked as Defendants'
9 Exhibit C for identification, Mr. Reilly, I ask you if
10 you can look at this picture and tell us whether or not
11 that accurately reflects, of course, with the exception
12 of the cars that might be parked in the area, at the inter-
13 section of Rhineland and Bronxdale Avenue taken from
14 a position east?

15 A Yes.

16 MR. BELLER: I didn't hear the answer.

17 THE WITNESS: Yes.

18 Q And with regard to Defendants' Exhibit D for
19 identification, does that picture not reflect accurately
20 1908 Bronxdale Avenue as it existed on February 3, 1972,
21 again without reference to cars parked or a particular
22 hurricane fence that appears in that picture?

23 A Except for the hurricane fence it appears to
24 be the same.

25 Q Now with regard to Defendants' Exhibit E for

1 identification, would you look at that picture and tell
2 us whether or not that accurately reflects a portion of
3 Bronxdale Avenue south of 1908 Bronxdale Avenue? In other
4 words, that would be?

5
6 A It appears to be, yes.

7 Q With, of course, the exception of cars parked,
8 right?

9 A Yes.

10 Q Similarly, the same questions, if I might, your
11 Honor, with regard to Defendants' Exhibit F for identi-
12 fication?

13 A It is the same --

14 THE COURT: That does not help the record very
15 much.

16 Can you tell us what the picture shows, or you
17 may ask him particular questions.

18 MR. FISHER: Yes, I will do that.

19 Q With regard to Defendants' Exhibit F for
20 identification, does that not accurately portray a section
21 of Bronxdale Avenue again a little bit south of 1908 Bronxdale
22 Avenue as it existed on February 3, 1972, without the
23 position of cars?

24 A It is the same photograph as Exhibit D, and
25 without a street sign I couldn't be sure this is Bronxdale

1

2

Q Is it the same photograph?

3

A It is approximately the same intersection.

4

Q A little bit different?

5

A A little bit different.

6

Q With regard to Defendants' Exhibit G for identification, would you look at G and tell us whether or not that accurately reflects the Rhineland and Bronxdale Avenue intersection as it existed on February 3, 1972, without the position of the cars?

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A Yes.

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Reilly-cross

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MR. FISHER: I offer Defendants' Exhibits C, D, E, F and G for identification.

4

5

THE COURT: Mr. Beller, do you want time to look at them? We will go on to something else?

6

7

8

9

MR. BELLER: I think I am almost done, your Honor. With respect to F, which is the one I think the witness said he can't identify Bronxdale Avenue because there are no street signs, is that correct?

10

Q Is that your testimony, sir?

11

12

13

A I said it was approximatly the same intersection as in picture D but I couldn't swear to a Rhineland Avenue.

14

15

THE COURT: Do you need all those pictures, Mr. Fisher?

16

17

18

MR. FISHER: I need F. Could I show it to the witness again?

19

20

21

22

23

THE COURT: Certainly. Q Would you look at Exhibit F again and compare it if you willo to E which you have identified and tell us now whether or not it accurately portrays the intersection of Bronxdale Avenue and Rhineland Avenue just south as it was depicted on February 3 without reference to the --

24

25

A Both appear to be Bronxdale and Rhineland and I can't be sure without seeing the street signs.

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Reilly-cross

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2 MR. BELLER: With that understanding we have no
3 objection.

4 THE COURT: All right.

5 I make the same suggestion to you, Mr. Fisher,
6 with respect to these pictures that I will take them for
7 the purposes of this hearing.

8 MR. FISHER: Thank you, your Honor.

9 The record should reflect that the name of the
10 photographer is William Vitel.

11 THE COURT: If you can't arrange for a stipula-
12 tion you will have to get a proper foundation for them.

13 MR. FISHER: Yes, your Honor.

14 (Defendants' Exhibit C through G for identifica-
15 tion were received in evidence.)

16 MR. FISHER: I will move on to another area while
17 your Honor is looking at them.

18 THE COURT: This C, is that looking down Rhine-
19 lander or is that Bronxdale?

20 THE WITNESS: This looks like Rhineland.

21 THE COURT: Very well, go ahead, Mr. Fisher.

22 Q So then that the surveillance point that you and
23 Mr. Spurdis took up after the DiNapoli vehicle arrived was
24 one different than the one you had taken up before it
25 arrived?

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Reilly-cross

A I believe it waa the same.

Q You believe it was the same?

A Yes, sir.

Q Do you recall testifying in a similar type proceeding, United States against Tramunti, don't you, Mr. Reilly?

A Yes, I do.

Q May I invite your attention to page 21 of the transcript of those proceedings --

THE COURT: Just read it to him and ask him if he ralls being asked that question and giving that answer and give the line and the page.

Q Page 21, line 8:

"Q Where did you park your car with respect to 1908 Bronxdale Avenue?

"A About two houses away on the same side of the street."

Do you recall that?

A No, I don't.

Q You don't recall that?

A No.

MR. FISCHER: May I have a stipulation from the Government that that is an accurate transcript of Mr. Reilly's testimony, your Honor?

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Reilly-cross

MR. BELLER: Yes, the Government so stipulates. Show it to him and then ask if it refreshes his recollection

MR. FISHER: The Judge suggested that I ask a question. The witness has no recollection of giving that testimony.

Q Is that right?

A Yes, sir.

MR. FISHER: And the Government so stipulated.

THE COURT: The asking of that question and those answers does not refresh your recollection or change your recollection in any way as to where you parked your car?

THE WITNESS: No, sir, it doesn't.

Q You are familiar, are you not with the complaint filed in connection with the arrest and seizure on February 3, 1972, is that right?

A Yes, sir.

Q Did you not discuss the contents of that complaint with Mr. Pallatroni and Mr. Spurdis prior to its being filed in the court?

A Just Mr. Spurdis.

Q You have read the complaint, have you not?

A Yes, I read it then.

rs5 Reilly-cross

Q At the time you read it everything contained therein appeared to be true to you?

A Yes, sir.

MR. FISHER: May this be marked as the next defendants' exhibit for identification.

(Defendants' Exhibit K was marked for identification.)

Q I am showing you Defendants' Exhibit K for identification and ask you to look at it and tell us whether or not that is an accurate copy of the complaint filed in this case, February 3, 1972?

MR. BELLER: We so stipulate.

THE COURT: It is conceded it is an accurate copy.

Q Referring to page 2 of that document, doesn't it state therein, sir, referring to the Cottage Inn Bar, one of the owners of said bar being Joseph DiBenedetto, a person residing at 1908 Bronxdale Avenue, New York, New York? Does it state that?

THE COURT: Is that a paper signed by this witness?

MR. FISHER: No, but it is one he read and agreed to the accuracy of, your Honor.

A Yes, it says that.

Q Isn't it a fact that you testified previously

1
2 that Mr. Benedetto was shown not to be living at 1908?

3 A There was nothing to show that he wasn't living
4 there.

5 Q Did the complaint say he was living there?

6 A That is the residence he gave.

7 Q But didn't you tell us at the time of February 3,
8 1972 you knew he didn't live there?

9 A His wife and family lived on Bay Shore Drive
10 and we had reason to believe he resided with them.

11 Q Didn't you tell us that you knew on February 3,
12 1972 that Joseph DiBenedetto had been shown not to live
13 at 1908 Bronxdale Avenue?

14 A Yes.

15 Q You read the complaint containing that statement
16 that he does live at 1908 Bronxdale Avenue and said it was
17 true when you read it?

18 A Right.

19 THE COURT: I am somewhat lost with respect to
20 the relevancy of the DiBenedetto address. Is that
21 for credibility purposes or how is it relevant?

22 MR. FISHER: Quite frankly and most respectfully
23 I'm at a loss as to the relevance of all this Cottage Inn
24 testimony but in that the Government saw fit to introduce
25 it, it is with regards to the credibility of this witness

and with regard to the accuracy of this alleged background information, this piece of examination was used.

MR. BELLER: DiBennedetto was the owner of the Cottage Inn Bar which was the focus of the investigation. DiBennedetto was arrested in early 1972 living at 1908 Bronxdale Avenue for a stolen car and when arrested gave the Bronxdale Avenue address. Subsequently it was ascertained that he did not live there.

THE COURT: I suppose a person can have an address and not live there, can't he? It is a different thing to have an address and live some place.

Let us proceed.

Q I am showing you what has received into evidence as Defendants' Exhibit F for the purpose of this hearing, sir. Could you by using my ubiquitous red felt pen put an X where you and Mr. Spurdis were parked after you made the U-turn behind the DiNapoli car? In other words, your surveillance point?

A I would have to see Exhibit E.

Q All right, I have it here.

A This is the intersection, is that right? The intersection of Bronxdale would be to the left.

THE COURT: Didn't he already mark Exhibit A or B?

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Reilly-cross

MR. FISHER: Yes, but I would like to have this marked since it pictures the houses.

Q Looking at Defendants' Exhibit F, would that help you, Mr. Reilly? F is a picture that really begins --

MR. BELLER: The witness should examine the photograph and if he can make the markings fine and if he can't based on the photograph --

MR. FISHER: No objection.

THE COURT: The witness ought to permit himself not to be rushed. He should look at the photographs and if he wants to check the photographs against the map he may do so do so and if he recollects where his car was parked, he should mark it. But he is not required to be guessing.

If you know where you parked tell us.

THE WITNESS: Assuming this is Bronxdale Avenue and Rhinelander, Exhibit F --

MR. FISHER: I so represent, your Honor.

THE COURT: Can you see from where you are?

MR. BELLER: I can't, your Honor.

THE COURT: Have you been to the location?

MR. BELLER: Yes, I have. I don't think the witness should proceed on an assumption.

THE COURT: The witness is not to guess but if he knows he should mark it. If he doesn't know, he may

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Reilly-cross

2 say so.

3 MR. FISHER: For the purposes of this hearing
4 I will represent that the left-hand corner is the corner of
5 Rhineland and Bronxdale because we just couldn't get it all
6 in in one picture.

7 MR. BELLER: Is there another photograph with
8 Bronxdale coming into 1908?

9 MR. FISHER: If the witness needs it.

10 THE COURT: If there are more photographs let us
11 proceduce them and get this question resolved..

12 My suggestion, Mr. Fisher, is that you give him
13 all the photographs.

14 MR. FISHER: I have others of Rhineland but
15 they don't relate.

16 THE COURT: All right.

17 MR. FISHER: The record should show that all the
18 pictures shown so far are the ones admitted into evidence
19 by your Honor.

20 THE COURT: Unless the picture shows the 1908
21 and the location of the car it wouldn't be meaningful to the
22 Court. It might be to you because you have been there and
23 it might be helpful to Mr. Beller because he has been there.

24 The Court hasn't been there and doesn't intend to
25 go there. Unless the picture shows the situs of the

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Reilly-cross

house and the car I don't see much merit to this procedure.

MR. FISHER: The photographer will be putting them together and your Honor will see the relevant.

Q Looking at Exhibit F will you please mark an X on the position where you and Mr. Spurdis took your surveillance on February 3, 1972?

THE COURT: If you can do so with a reasonable degree of certainty, if you can do that.

THE WITNESS: Yes, sir.

THE COURT: Can you do that?

THE WITNESS: Yes, sir.

THE COURT: All right, do it.

(Witness complies.)

THE COURT: All right, where is 1908?

MR. FISHER: To the left.

THE COURT: It is not pictured on Exhibit F?

MR. FISHER: F, your Honor, would put that -- would put Exhibit D next to that. That would correspond to this. This is the intersection of Bronxdale.

THE COURT: Mr. Fisher, I really have to say that what we are going through with the pictures here is not too meaningful to me. I notice F and G seem to comprise the same corner from very different perspectives and there is no way that the Court can connect -- which is 1908?

1 rsll

Reilly-cross

2 MR. FISHER: The house with that fence in front
3 of it.

4 THE COURT: This one here?

5 MR. FISHER: Yes.

6 THE COURT: There is no way that the Court can
7 connect the structures in the three photographs to be
8 meaningful.

9 My suggestion is that you leave this topic and
10 go back to something else that is more fruitful.

11 MR. FISHER: Yes, sir.

12 Q In any event, Mr. Reilly, you were the first
13 car that could have been parked on the south side of Bronx-
14 dale right after the intersection of Rhineland, is that
15 right?

16 A Yes, sir.

17 Q Now --

18 THE COURT: Do you understand the last question?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right .

21 Q At a point in time a man exited 1908 Bronxdale
22 Avenue, did he not, and enter a car with was then followed
23 by Mr. Pallatroni?

24 A That is true, yes.

25 Q You recall, do you not actually yourself observing

1 rsl2

Reilly-cross

2 that fact?

3 A Yes.

4 Q You weren't able to observe whether this man
5 was carrying in fact an attache case, isn't that right?

6 A I don't remember.

7 Q You don't remember or you didn't see one?

8 A I don'r remember.

9 Q At the time this man left it was raining very
10 hard, isn't that right?

11 A Yes, it was.

12 Q Just as it was when you arrived?

13 A Yes, it was.

14 Q Just as it was when you first saw this man y
15 identified as Vincent Papa?

16 A Right.

17 Q And just as hard as when Mr. DiNapoli and Mr.
18 Papa exited 1908?

19 A I believe it was still raining as hard, yes.

20 Q Referring to page 80, lines 10 through 15, do you
21 recall again testifying at the Tramunti hearing?

22 A Yes.

23 Q Do you recall whether or not you gave this answer
24 to these questions:

25 "Q Was this attorney when he left the house

rsl3

Reilly-cross

carrying a briefcase or an attache case?

"A I don't recall that.

"Q You did not see that?

"A No."

Did you give that testimony?

A Probably did.

Q Does that refresh your recollection as to whether or not in fact you specifically did not see this man leaving carrying an attache case?

A I don't remember seeing Mr. Richmond carrying a suit case.

THE COURT: He said an attache case.

THE WITNESS: An attache case, I am sorry.

Q At the time that you observed this man leaving 1908 Bronxdale Avenue can you tell us please what time that was?

A I believe about 9.15.

Q During this night you and -- you were in your car and Mr. Pallatrini was in his case and you were in frequent radio communication?

A That is right.

Q You had two-way radios in each of the cars?

A That is right.

Q Those are equipped with two kinds of communica-

1 rs15 Reilly-cross

2 A Yes.

3 Q What you heard on the radio is what Mr. Spurdis
4 would have heard if he was sitting next to you and vice versa?

5 A Right.

6 Q Now, there as, was there not, a radio communica-
7 tion from you, sir, to the Pallatroni vehicle at the time
8 this man left the house, isn't that right?

9 A Yes.

10 Q In fact you in substance told him you spotted a
11 man leaving 1908 Bronxdale, the car was 176-MR, getting into
12 the car 176-MR, isn't that what you told him?

13 A Something like that. I don't remember exactly
14 myself.

3 15 Q In order to save time, you do recall in substance
3 16 telling him someone is leaving 1908 Bronxdale?

17 A Yes, sir.

18 Q He got into a car?

19 A Yes, sir.

20 Q And this car license plate was 176-Mr -- if y
21 don't specifically recall the plate you told him the plate,
22 whatever it is?

23 A Right.

24 Q Thereafter you were advised Mr. Pallatroni was
25 following this car?

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Reilly-cross

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A That is true.

3

Q How were you advised of that fact?

4

A We were in radio communication.

5

Q He indicated to you that he was going to follow

6

his car 176-MR?

7

A Yes.

8

Q Did there come a point in time when he communicated

9

to you that he was on his back back?

10

A Yes.

11

Q What was the full substance of that communication?

12

A He said that the car he followed was driving

13

very aggressively and thought the car was trying to throw him
14 off 1908 Bronxdale Avenue.

15

Q At this point in time did he say where he was?

16

A Just on his way back. I don't know where he

17

was.

18

Q You subsequently learned from Mr. Pallatroni that

19

this was at the loop of the Cross Bronx Expressway and the
20 Bronx River Parkway?

21

MR. BELLER: I object to the hearsay.

22

THE COURT: Subsequently when?

23

Q At any time prior to your testimony today?

24

THE COURT: I will sustain an objection to that.

25

Q In any event --

1 rsl7 Reilly-cross

2 THE COURT: Prior to arrdst I will take it.

3 MR. FISHER: If your Honor please, there has been
4 substantial hearsay coming in on direct.

5 THE COURT: But if it is post-arrest it can
6 neither help nor derogate from the intention of reasonable-
7 ness.

8 MR. BELLER: I would also say that the original
9 hearsay goes to probable cause. Agent Pallatroni is going
10 to be here.

11 MR. FISHER: There is another way of doing it.

12 Q When Mr. Pallatroni gave you this radio message
13 he said in substance "I just discovered I am led away from
14 1908 Bronxdale Avenue by evasive tactics?"

15 A Yes, words to that effect.

16 Q He just discovered.

17 What else did he say to you at that time?

18 A That he drove to the loop where the Bronx Express-
19 way and the Bronx River Parkway meet.

20 THE COURT: That is where he was when he was talk-
21 ing to you?

22 THE WITNESS: That is when he said he was coming
23 back to 1908 Bronxdale Avenue.

24 MR. FISHER: Fine.

25 MR. BELLER: I am having trouble seeing and hear-

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Reilly-cross

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ing the witness.

3

Could you read back the last few answers?

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THE COURT: Read back the last few questions and

5

answers.

6

(Record read.)

7

jb T4 am

Q How far away is this loop from 1908 Bronxdale
Avenue, in miles?

9

A It's lesss than a mile, I would say.

10

Q Less than a mile?

11

A Yes.

12

Q And how long --

13

A Depending on which way you went. By the way

14

Mr. Pallatroni went, it was probably longer than a mile.

15

Q About how far would you say?

16

A I don't know. I would say about a mile and
three-quarters.

18

Q At the point in time you received this message,
how long had Pallatroni been gone?

19

A I don't recall, to tell you the truth.

20

21

Q That was the full substance of the message, isn't
that right?

22

23

A Yes. Basically, that was it.

24

Q Was there anything else that you now recall, sir?

25

A Not that I can recall.

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Reilly-cross

Q Did that message come to you over the car-to-car band or to the station?

A It was still car-to-car, I believe.

Q You don't know?

A I don't know.

Q If you were calling 201 Varick Street, your headquarters, on your car radio, would you be able -- would Pallatroni, for instance, overhear what you are calling it?

A Yes. There is a search button that you keep on even with the car-to-car communication; you are still listening to the base.

Q During that night you were then able to overhear whatever communications Pallatroni was sending to the base station, isn't that right?

A Yes.

Q So, of course, you heard Mr. Pallatroni radioing in for information with regard to who owns 176-MR, isn't that right?

A That's right.

Q You have indicated that you can hear Pallatroni calling base station. Can you hear base station calling Pallatroni in your car, too?

A Yes.

Q So you heard, did you not, the base station call-

1 bs3 Reilly-cross
2 ing Pallatroni and telling him that 176-MR was registered
3 to Murray Richmond, isn't that right?

4 A No, that's not right.

5 Q You never heard that?

6 A No.

7 Q Any time that night?

8 A No, sir.

9 Q You are positive of that?

10 A Positive.

11 Q Did you hear anyone saying that the computer in
12 Albany was broken down, sir?

13 A I believe the computer was down, yes.

14 THE COURT: The question is did you hear it over
15 the radio.

16 A I don't recall. We didn't get the informat
17 back. I don't recall why.

18 Q You don't recall whether or not you heard over
19 the radio if the computer in Albany was broken down that
20 night, is that right?

21 A I don't recall that, no.

22 Q Do you recall, however, that Mr. Pallatroni
23 radioed in for information with regard to the registry of
24 a plate on the 1968 Pontiac?

25 A I called that plate in, myself.

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Q You called that in?

A Yes, sir.

Q Did you hear Mr. Pallatroni calling it in?

A Yes. He was becoming impatient because we weren't getting the information back. I called it in, too.

Q But you called it in and he called it in, is that right?

A Right.

Q Was there one response for the both of you, ultimately, from his quarters about the registry of that plate?

A I believe there was, yes.

Q What was that response, sir? What were you told?

A I believe it came back to a Wide World Auto Leasing Company, Far Rockaway.

Q Are you positive, sir, that you were told it was a leasing company that it came back to?

A No, I am not positive.

Q In fact, sir, weren't you told that it came back to Wide's Motor Sales?

A It's possible. I have to check the log books.

Q Would you like to check the log right now, sir?

A Sure.

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Reilly-cross

MR. FISHER: May that be produced and marked.

THE COURT: I'll take a ten-minute recess,
gentlemen.

(Recess.)

THE COURT: While he is getting the witness,
the record ought to show that Mr. Papa, Jr., did arrive
here.

MR. LOPEZ: Yes, almost at the commencement of
the hearing.

THE COURT: Yes, and his presence is now noted.
You are reaching your client, are you not, Mrs.
Rosner?

MRS. ROSNER: Your Honor, I caused his place of
business to be called. However, Mr. Stanzione works on
the road, buying and selling used cars and, although the
message has been left, I am not sure how quickly he will get
it. I know as soon as he gets it, he will be here, your
Honor.

THE COURT: He should use his best efforts.

MR. ROSNER: I am sure he will.

MR. FISHER: Before the recess, the witness
indicated he might be able to refresh his recollection with
regard to radio communications by looking at the log.

I ask that it be marked and shown to the witness

1 bs6

Reilly-cross

2 to refresh his recollection.

3 MR. BELLER: We have an application at this
4 time in chambers.

5 THE COURT: Can you give me the substance of
6 your application here or is it something that must be heard
7 inside?

8 MR. BELLER: Well, the log contains, you know,
9 calls in from different groups.

10 THE COURT: What is your application?

11 MR. BELLER: If we are going to show this
12 witness something to refresh his recollection, and it is
13 available to the defense counsel, we really only want the
14 information that is relevant to this investigation in this
15 case --

16 THE COURT: Couldn't you, during the noon hour,
17 prepare a redacted log to show him what concerns this
18 particular matter?

19 MR. BELLER: I already have.

20 THE COURT: When I say this matter, of course I
21 have to extend it to include Stanzone, because that is what
22 he was, theoretically, working on, isn't that right?

23 MR. BELLER: I think Mr. Fisher is referring to
24 February 3 and we have the logs for that date and I have
25 prepared a redacted page.

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Reilly-cross

MR. FISHER: May we have the Government's representation that the redacted page includes and does not redact any transmissions to or from Spurdis, Reilly, Reed or Pallatroni on the night of February 3, 1972, and if I have that representation, I have no objection to it.

MR. BELLER: It has everything, on February 3, from --

THE COURT: Is the inquiry clear? Did you get all the names that he asked you about?

MR. BELLER: Yes, your Honor. I would have to confer. I have prepared what I think adequately covers that problem but I would have to confer with one of the agents.

MR. FISHER: I will go on to other areas.

THE COURT: Let's be clear about it.

You have limited it to a particular date and I assume Mr. Fisher would narrow the hours on that date if it were necessary.

MR. FISHER: 7 o'clock to 11 o'clock.

THE COURT: 7 p.m. to the 11 p.m. on February 3.

MR. FISHER: Excuse me, your Honor. No.
7 p.m. to midnight.

THE COURT: To midnight.

MR. BELLER: I think we are really only concerned

1 bs8 Reilly-cross

2 with the arrest.

3 THE COURT: But let's start with what he wants
4 and then let's see if you can reasonably accommodate him.
5 If not, we will have to consider it.

6 What date was that, again?

7 MR. FISHER: February 3, 1972.

8 THE COURT: And the persons' names whom you asked
9 for were what, besides this witness?

10 MR. BELLER: Spurdis, Reilly, Reed and Pallatroni.

11 THE COURT: Can you furnish that data without
12 the need for redaction?

13 MR. BELLER: I have redacted the log with what I
14 believe to contain all information relevant to that
15 request.

16 THE COURT: You see, what he is asking is whether
17 the redacted paper can be represented by the Government as
18 containing all of the transmissions recorded on the part of
19 these four persons during that five-hour period on that
20 date.

21 MR. BELLER: That's correct. I believe I can
22 make that representation after conferring briefly with one
23 of the agents, just to check.

24 MR. FISHER: I'll go into other areas.

25 THE COURT: Perhaps that can be resolved during

B2

1 the luncheon recess. If you can't make it for any reason
2 then I will proceed further with you but you may obviate
3 any difficulty.
4

5 MR. BELLER: I have prepared this page and I
6 believe this is a proper redaction but I just want to be
7 sure.

8 THE COURT: It is one thing to be a proper re-
9 daction which is something I would have to determine myself
10 but an in camera inspection, and it is another thing to
11 say that the redaction includes all transmissions by these
12 four named persons during this specific period of time.

13 MR. BELLER: That's what I meant by "proper".

14 THE COURT: Well, when you are able to make the
15 representation, if you can, then that will obviate the
16 difficulty.

17 MR. BELLER: Okay.

18 THE COURT: Let's take something else, if you can.

19 MR. FISHER: I'll go on to other areas, your Honor.

20 Q You have told us about the weather conditions,
21 Mr. Reilly. Would you please tell us whether or not you
22 have been to 1900 Bronxdale Avenue within the last six months?

23 A Yes, I have.

24 Q Have you been there at night, sir?

25 A No, sir, I haven't.

Q Have you been there at night, sir, within the last year?

A No, sir.

Q You have told us that a white male-- the first person you saw entering or leaving 1908 Bronxdale Avenue when you arrived left 1908 Bronxdale Avenue, an old male I think you said --

A Yes, sir.

Q -- and got into a car?

A Yes, sir.

Q Would you put a C, please, if you can, on Defendants' Exhibit B in evidence -- I think it's for identification.

MR. FISHER: The map is identified as Exhibit B for identification.

Q Would you put a C, please, indicating the location of that car?

THE COURT: When the person entered it, is that what you are asking?

MR. FISHER: Thank you.

A This is the first?

Q Yes. The old male that you described.

A Okay (marking).

Q That would be, then, pretty much right in front

1 of 1908 Bronxdale Avenue?

2 A Right.

3 Q You have told us about three women leaving
4 1908 Bronxdale Avenue, is that right?

5 A Right.

6 Q Would you please indicate with a D where their
7 car was parked?

8 A I can't be exact. It was on that block, parked
9 at the curb but the exact position I don't know.

10 Q When you say on that block, you are referring
11 to Bronxdale Avenue, that portion of Bronxdale Avenue which
12 has 1908 --

13 A True, yes.

14 Q In other words, then you are referring to this
15 area here, indicating, if I might --

16 THE COURT: Well, it's between Rhineland
17 and the cross street, whatever it is.

18 MR. FISHER: Thank you.

19 THE COURT: What is the cross street there?

20 MR. FISHER: I don't know. It's indicated as
21 "avenue" here.

22 THE COURT: Is it Barnes? No; it's something
23 else.

24 Q Would that be right? In other words, the car
25

1 that the women got into was on this portion of Bronxdale
2
3 Avenue, as the Judge just reflected it for the record?

4 A Yes.

5 Q Then you told us that the person, a person got
6 out of the car at 1908 Bronxdale and was followed by Mr.
7 Pallatroni?

8 A Yes.

9 Q Where was his car parked, sir?

10 A I believe he was in this portion of the block.
11 (indicating).

12 "His car" being whose?

13 A Mr. --

14 Q It turned out to be Richmond, didn't it?

15 A Right.

16 Q Would you put a D where his car was parked?

17 A I am only going to approximate it.

18 Q The best you can, sir.

19 THE COURT: There is no use in putting down places
20 the witness is only guessing.

21 Q Are you only guessing, Mr. Reilly?

22 A He was approximately in that location.

23 THE COURT: He was approximately at D. This
24 is the man who turned out to be Richmond and that's not
25 the person that you are referring to as the old white male?

1 THE WITNESS: No, sir.

2
3 Q Then you told us that two men exited 1908
4 Bronxdale and got into separate cars, isn't that right?

5 A Right.

6 Q Did you see where their cars had been parked?

7 A They weren't parked on Bronxdale Avenue.

8 Q Do you know where they were parked?

9 A I don't know for sure, no.

10 MS. ROSNER: Could the witness keep his voice up?

11 THE COURT: Yes. Mr. Fisher, return to the lectern
12 except when you are actually using the exhibits. Anybody
13 that can't hear, let the Court know.

14 Q Referring to the point of your surveillance
15 on Bronxdale Avenue, there were how many cars parked on
16 Bronxdale Avenue between you and 1908?

17 A The block was full. I would say four or five
18 cars.

19 Q And the observations that you made were entirely
20 through your automobile that night, isn't that right?

21 A Yes.

22 Q You never got out?

23 A No, I never did.

24 Q And you were unable to see Mr. Pallatroni and
25 Mr. Reed in their car from where you were sitting in your

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Reilly-cross

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car, isn't that right?

A Correct.

Q During that night, you were in charge of radio communications, isn't that right?

A Right.

Q You made all of the calls, isn't that right?

A I believe I did, yes.

Q At about 9:30, sir, in the evening or thereabouts, two men exited 1908 Bronxdale Avenue, is that right?

A Yes.

Q And one of them, you say, was carrying a suitcase, is that right?

A Yes, sir.

Q This suitcase, Government Exhibit 1 in evidence, right?

A Right.

Q Were you able to see the color of the suitcase at the time you observed it on the way out of 1908 Bronxdale Avenue?

A No, sir, I wasn't.

Q Were you able to observe the color of the suitcase that you observed going into 1908 Bronxdale Avenue?

A Not exactly, no, I could never say so.

Q So, there is no way for you to know whether

1 jbh
2 Government Exhibit 1 in evidence is the same suitcase that
3 you saw going in, isn't that right?

4 A That's correct.

5 Q You don't know one way or the other?

6 A Right.

7 Q At the time of the arrest, you didn't know one
8 way or the other?

9 A Right.

10 Q By the way, it wasn't your decision to arrest,
11 was it?

12 A No, it wasn't.

13 Q It was Mr. Pallatroni's, wasn't it?

14 A Yes, it was.

15 Q Clearly his?

16 A Yes.

17 Q At what point in time did he make that decision?

18 MR. BELLER: I object, your Honor.

19 THE COURT: Well, he can't answer that, can he?
20 All he can tell us is when he was told to make the arrest.

21 MR. FISHER: Yes, that's quite right.

22 Q Did there come a time when Mr. Pallatroni directed
23 you and Spurdis to make an arrest?

24 MR. BELLER: I object. It is the defense's theory
25 that Pallatroni made the arrest on hearsay statements made

1 to this witness.

2 MR. FISHER: This is direction, not hearsay.

3 THE COURT: I'll take it if he knows when he was
4 told. It would not necessarily be hearsay. I assume it was
5 immediate, wasn't it? "Go arrest him," isn't that what
6 happened here?

7 THE WITNESS: No, sir, not exactly.

8 THE COURT: When, if ever, did he instruct you
9 to make an arrest?

10 THE WITNESS: Approximately a block or two from
11 where we finally did make the arrest, Special Agent Palla-
12 troni said "Take the car," which to us meant make the
13 arrest.
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15 THE COURT: In time, how much time elapsed between
16 the time the direction was given to you and the time that
17 you effected the arrest?

18 THE WITNESS: Half a minute.

19 Q And you were told this, were you not, while you
20 were approaching the intersection of East Tremont and
21 Castle Hill Avenues in the Bronx?

22 A Correct.

23 Q Right near St. Raymond's Church, isn't that right?

24 A Right.

25 MR. FISHER: May this be marked as Defendants'

next for identification.

xx 3 (Defendants' Exhibit L marked for identification.)

4 Q Showing you what has been marked as Defendants'
5 Exhibit L for identification, would you look at that and
6 tell us whether or not that accurately reflects the
7 retaining wall in front of St. Raymond's Church as it
8 existed on February 3, 1972?

9 A Yes.

10 MR. FISHER: I ask that it be marked into evidence.

11 MR. BELLER: No objection.

12 THE COURT: Received.

xx

13 (Defendants' Exhibit L received in evidence.)

14 Q Getting back to 9:30 or so in the evening when
15 these two gentlemen exited 1908 Bronxdale Avenue, who
16 was walking ahead of who?

17 A They were both walking abreast.

18 Q Both walking abreast?

19 A Yes.

20 Q Would that be true as they walked down the stairs,
21 sir?

22 A I don't know who was first. They probably walked
23 down separately. I don't remember who was --

24 Q But there were stairs going up to 1908 Bronxdale,
25 isn't that right?

1 A Yes, there are.

2 Q In fact, you observed the stairs when you first
3 saw Vincent Papa and Joseph DiNapoli enter 1908 Bronxdale
4 Avenue?
5

6 A Correct.

7 Q Do you recall now whether or not these men left
8 one abreast of the other or one in front of the other?

9 A They were very close to each other, Mr. Fisher.

10 Q Do you remember who was first, if anyone?

11 A I believe it was Mr. Papa.

12 Q Who was carrying the suitcase?

13 A Mr. DiNapoli was carrying the suitcase.

14 Q You are certain of that?

15 A Positive.

16 Q No doubt in your mind?

17 A No doubt in my mind.

18 Q Then, sir, why did you tell Mr. Pallatroni over
19 the radio that Mr. Papa was carrying the suitcase?

20 A At first it appeared that he was.

21 Q You changed your mind later, is that right?

22 A That's right.

23 Q But, at the time that you made the original
24 observation, it appeared to you, did it not, that Vincent
25 Papa was carrying the suitcase?

1 A It did.

2 MR. FISHER: Vincent Papa, please stand up.

3 (An individual in the spectators' section arose.)

4 Q Is Mr. Papa now about as tall and about as heavy
5 as he was on the night of February 3, 1972?

6 A Yes, sir.

7 MR. FISHER: Thank you, Mr. Papa.

8 Mr. DiNapoli, would you please stand.

9 (A person in the spectators' seat arose.)

10 Q Is Mr. DiNapoli as he appears now about as tall
11 and heavy as he was on February 3, 1972?

12 A He is.

13 MR. FISHER: Mr. Papa, would you stand up next
14 to Mr. DiNapoli?

15 (The spectator who first arose again stood up.)

16 Q Would you agree, sir, and may the record reflect
17 that Mr. DiNapoli is about six or five inches taller than
18 Mr. Papa?

19 A Yes.

20 Q As you have indicated before, it was pouring
21 at this time and these two men are walking out, one of whom
22 is carrying a suitcase, is that right?

23 A Yes.

24 Q Are you certain, sir, that you were able to
25

1 observe one of these men carrying a suitcase with two
2 hands, or did it merely appear to you to be the case?
3

4 A Appeared to me that it was being carried with
5 two hands.

6 Q But, were you certain of it at the time, sir?

7 A Yes, I was.

8 Q Absolutely certain?

9 A Yes, sir.

10 Q Isn't it a fact, sir, that at the prior pro-
11 ceedings here, when asked specifically whether or not
12 Mr. DiNapoli was carrying the suitcase with two hands,
13 your answer was "I guess so"?

14 MR. BELLER: Could you help me, Mr. Fisher?

15 MR. FISHER: I sure could.

16 THE COURT: As far as confronting a witness with
17 prior testimony, the method to be used is to ask him whether
18 he recalls being asked this question and giving this answer
19 and state the line and page.

20 MR. FISHER: Page 85, your Honor.

21 THE COURT: 85, is it? Don't paraphrase it.

22 MR. FISHER: I'm sorry, your Honor. Page 37.

23 THE COURT: Read it to the witness. Read the
24 question to the witness and the answer.

25 MR. FISHER: Sorry, your Honor. I think it is page

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Reilly-cross

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Q Mr. Reilly, isn't it a fact, sir, that on January 9, 1974, in the United States v. Tramunti, you were asked these questions and gave these answers:

"Q Could you describe for us how the suitcase was carried by the individual who turned out to be DiNapoli from 1908 Bronxdale; that is, the house itself, to the automobile?

"A Yes. It appeared to be out in front of him, in front of his body as though he was holding it with two hands.

"Mr. Lopez: Your Honor, I would like to know, was he or wasn't he?

"The Witness: I guess he was holding it with two hands."

Q Did you give those answers to those questions?

A If that's what is there, I guess I did.

MR. FISHER: Will you stipulate that that is what is there, sir?

MR. BELLER: Yes.

Q Mr. Reilly, you are a police officer of some experience, isn't that right?

A That's right.

Q Tramunti was not the first cause you ever gave

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Reilly-cross

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testimony in, isn't that right?

A That's right.

Q And on motions to suppress, as in all cases where you testify in criminal cases, you choose your words carefully, don't you?

A Yes.

Q You want to be accurate?

A Yes.

Q You want to tell the truth?

A Right.

Q And you said "I guess so," isn't that right?

A Yes.

Q You weren't sure, really, were you?

A Picturing it in my mind, Joe DiNapoli was carrying that suitcase in two hands.

Q And certain of your recollection, your answer was "I guess so, sir"?

A If that's what is there, that's what I said.

Q That's what is there.

A That's what I said.

Q Who effected the arrest, if you know, sir, of Mr. Papa?

A I put the handcuffs on him. I said, "You are under arrest."

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Reilly-cross

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Q Did you see Mr. DiNapoli being arrested?

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A Yes, I did.

4

Q Did you see Mr. DiNapoli being placed over the retaining wall at St. Raymond's Church?

6

A Yes, sir.

7

Q The same retaining wall that was just shown to you in Defendants' Exhibit L in evidence?

9

A Yes.

10

Q The wall is about what, a foot, two feet high?

11

A Yes, sir. Two feet, I guess.

12

Q Mr. DiNapoli was doing pushups in the rain, in effect?

14

MR. BELLER: Objection.

15

A Not doing pushups.

16

THE COURT: Sustained.

17

Q Sir, this was the first time in your whole life that you participated in the seizure of one million dollars, isn't that right?

19

20

A It is, sir, yes.

21

Q So that suitcase was the subject of considerable importance to you, isn't that right?

22

23

A Yes, sir.

24

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Q Especially after you learned that there was a whole chunk of money in it?

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2 A Yes, sir.

3 Q And the custody and preservation of the chain
4 of evidence with regard to the suitcase was similarly a
5 question of significant importance, isn't that right?

6 A Yes, sir.

7 Q And, no aspersions intended at all, sir, certainly
8 you were aware that you have got a suitcase full of a
9 lot of cash, everyone has to be very, very careful on how
10 that is handled so that no questions are raised later, isn't
11 that right?

12 A Right.

13 Q And that was very much in your mind at the time?

14 A Yes, sir.

15 Q You and Mr. Pallatroni ultimately go down to
16 Varick Street together; isn't that right?

17 MR. BELLER: I will object to this.

18 MR. FISHER: This is offered on credibility, your
19 Honor.

20 MR. BELLER: I object to the questions that
21 begin to go into events that occurred substantially after
22 the arrest.

23 MR. FISHER: This is on the way to Varick Street.

24 THE COURT: I would permit a limited degree of
25 cross-examination on the issue of credibility but I am not

going to take a large amount of it.

MR. FISHER: This is just one area, your Honor.

THE COURT: All right. On your representation that that is what it's offered for, I will take this one line of inquiry.

MR. FISHER: One precise area.

Q At the time that you were running to 201 Varick Street, you were sitting in the rear of the vehicle driven by Pallatroni, is that right?

A True.

Q You, together with Vincent Papa?

A Yes.

Q And this suitcase?

A Right.

Q Right?

A Yes, sir.

Q And that suitcase was literally right next to you, isn't that right?

A No. Next to Mr. Papa.

Q Next to Mr. Papa, but there is no question in your mind that it was in there, isn't that right?

A No, sir.

Q On the way back, at a point in time, Pallatroni stops the car, is that right?

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2 A Yes.

3 Q He directs you and Vincent Papa to leave the
4 car, is that right?

5 MR. BELLER: I can't see how this can conceivably
6 by relevant to the probable cause issue or to Officer
7 Reilly's credibility.

8 THE COURT: I can't see how it is up until now.

9 MR. FISHER: If your Honor please, I have about
10 three more questions on it and that's it.

11 THE COURT: Stop beating about the bush. What
12 is the question? You are going to be bound by the answer,
13 you know, if it is a collateral matter.

14 MR. FISHER: I'll take the chance.

15 THE COURT: What is the question?

16 Q The question is: You and Papa were directed
17 to leave the vehicle by Pallatroni, is that right?

18 A Yes, sir.

19 Q And Pallatroni and that suitcase were left in
20 the car, is that right?

21 A Right.

22 Q For how long a period of time?

23 A Five seconds, ten seconds.

24 Q And Pallatroni gave as what reason, what
25 explanation for this direction for you to leave, get out

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Reilly-cross

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of the car in the pouring rain with Vincent Papa?

MR. BELLER: This is also hearsay.

THE COURT: It doesn't affect this witness' credibility, does it, what Pallatroni said to him?

MR. FISHER: It might affect Pallatroni's when he gets on the stand.

THE COURT: You can ask him when he gets on the stand.

Objection sustained.

MR. FISHER: I will withdraw the question.

t5/1 am

MR. FISHER: The only other area I have which relates to this witness is the question of the radio communications. Would this be an appropriate time to break for one moment?

THE COURT: It wouldn't be, Mr. Fisher, because I have a matter coming on at 2 and I am going to resume this case at 2:15 so it would be premature to take a luncheon recess at thistime.

Is there anyone else who has inquiry of this witness?

MRS. ROSNER: No, your Honor.

MR. ROSENBERG: I have some questions.

THE COURT: All that he has is that he wants to ask about the log. I don't know if he wants to proceed tentatively with the redacted log. He is giving a hypothetical representation as to the log as I understand it.

MR. FISHER: If I may confer with co-counsel briefly

THE COURT: Certainly.

(Pause.)

MR. BELLER: At this time I do want to state for the record that the government's position is that only Mr. Papa has standing in this proceeding and we do object to other counsel questioning the witness.

THE COURT: The difficulty with the problem

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Reilly-cross

1 raised is that if the motion to suppress is denied and if
2 the money and the suitcase is received in evidence, which
3 I assume the government would offer them, and if the
4 government succeeds in providing evidence of the existence
5 of a conspiracy, then any dealing which this defendant
6 Papa had with the money might be considered by the jury
7 as evidence against all of these defendants.
8

9 Now, I know we have the Persico case in this
10 district, coming from the Eastern District, but it is
11 of some concern to me because when that green money is
12 sitting there on the government counsel table the record
13 may get into the posture where this jury can consider it as
14 evidence against all the defendants.

15 So I think they have a direct interest in it,
16 and they shouldn't be adversely affected if Mr. Fisher
17 missed a point.

18 I will not allow them any redundant or
19 repetitious or far-ranging inquiry by these other defendants
20 but I consider the other defendants are vitally affected,
21 although there may be some difficulty about their standing
22 and the posture of their clients shouldn't depend on the
23 completeness of an inquiry by somebody else's lawyer.

24 But I am not making any definitive ruling as
25 to standing.

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Reilly-cross

MR. ROSENBERG: I understand that.

THE COURT: I will permit you in the interests of justice a limited cross examination relating to matters not covered by Mr. Fisher, and I am calling on all of you not to try the patience of the Court.

BY MR. ROSENBERG:

Q I believe you testified before that it was Mr. Papa who passed in front of your car, is that correct, and carrying a suitcase?

A No.

Q Well, on the way into 1908 Bronxdale Avenue?

A No.

Q Who did you observe going into 1908 Bronxdale Avenue?

A The man identified as Joseph DiNapoli.

Q Did you see Mr. Papa go into 1908 Bronxdale Avenue?

A Yes.

Q That is what I am talking about.

A He didn't have a suitcase.

Q He didn't have a suitcase?

A No.

Q Did Mr. DiNapoli have a suitcase?

A Yes.

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Reilly-cross

2 Q Mr. Papa was the one that passed by the window
3 and because the window was rolled down, you were able to
4 identify him as a Papa, is that right?

5 A Yes.

6 Q How about DiNapoli, did he pass the window
7 also?

8 A No.

9 Q There came a time when DiNapoli went into
10 1908?

11 A Yes.

12 Q You weren't able to identify DiNapoli nor was
13 Spurdis able to identify him?

14 A That is correct.

15 Q Did you observe the person carrying the suitcase
16 into the building originally?

17 A I am sorry?

18 Q Did you observe somebody carrying the suitcase
19 into the building originally?

20 A Yes.

21 Q You said that they were walking at a normal
22 gait or something like that?

23 In other words, it didn't appear to be heavy,
24 is that right?

25 A That is right.

1 arbr 5
2 Q But for the fact that somebody was carrying
3 it out with two hands, that is what made you determine that
4 it was heavy and that is what you communicated to
5 Pallatroni?

6 MR.BELLER: I don't think there was testimony
7 but for that.

8 THE COURT: He can answer this is not the only
9 reason or is the only reason.

10 Q It appeared then that somebody had some kind
11 of struggle with the suitcase because they were carrying
12 it with two hands?

13 A That is correct.

14 Q You passed that information on to Pallatroni,
15 you said it appears to be heavy?

16 A Right.

17 Q Was there any conversation with you and Spurdis
18 at that time with respect to that suitcase?

19 A Not at that time, no.

20 Q In other words, you went on the intercom and said
21 to Pallatroni it appears to be heavy?

22 A Right.

23 Q Did you conclude that, sir, because the
24 party was carrying it with two hands? Is that the basis
25 of your conclusion?

1 arbr 6 Reilly-cross

2 A Yes.

3 Q So that if the party was carrying it with one
4 hand, you wouldn't have known whether the suitcase was of
5 the same weight going in as coming out, is that right?

6 A That is correct.

7 Q The only way you can make that determination
8 is that he had been carrying it with two hands, is that
9 right?

10 A Right.

11 Q You are quite certain that as he was coming
12 down the steps he was holding it with two hands?

13 A Down the steps I wasn't sure. I thought
14 it was Mr. Papa had the suitcase coming down the steps.

15 Q The party coming down the steps, was he carrying
16 it with two hands?

17 A Between them. It was undeterminable then.

18 Q There came a time when you made that determin-
19 ation?

20 A Right.

21 Q Where was your car parked with respect to
22 this observation?

23 A I can show you on the map.

24 Q Suppose you tell it to me. How far from where
25 the witness was? In other words, somebody had the suitcase,

1 arbr 7 Reilly-cross

2 is that correct?

3 A About 100 feet.

4 MR. BELLER: What witness?

5 MR. ROSENBERG: The person carrying the suit-
6 case.

7 Q Is that right?

8 A Yes.

9 Q About a hundred feet?

10 A Yes.

11 Q You were on the passenger side of the car,
12 is that correct?

13 A Right.

14 Q And the observations are based looking through
15 the window of the driver's side 100 feet down?

16 A Not through the driver's side.

17 Q The front?

18 A Right.

19 Q The front window?

20 A Right.

21 Q In other words, at that time you had to start
22 the motor up and had the windshield wipers going?

23 A We were on AC and had the wipers going.

24 Q They were going on at all times?

25 A No.

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Reilly-cross

Q At least at the time that they were coming out?

A Right.

Q You observed somebody 100 feet away and the wipers were going?

A Right.

Q And after 100 feet away you made your observation that somebody was carrying this suitcase with two hands, am I correct?

A Right.

Q Were you able to approximate the weight at that point?

A No.

Q In other words, you had no way of knowing whether it was 20 pounds or 60 pounds or 100 pounds, is that correct?

A Right.

Q You didnt' even know whether or not if in fact it was being held with two hands was because of the weight or the contents of that suitcase, is that correct?

A Right.

Q Do you recall whether or not there was any conversation between you and Spurdie with respect to somebody carrying the suitcase with two hands?

MR. BELLER: That is already answered.

THE COURT: I think he did already answer it.

I will let him answer it.

Q Do you recall that?

A I don't recall having a conversation with John then. I may have but I don't recall it.

Q So you called this into Pallatroni and said somebody is carrying a suitcase with two hands?

A Right.

Q Is that what you said?

A I said "They are out of the house, the suitcase appears to be heavy, Papa got it" or something like that.

I changed my mind when I saw them out in the street, who had it, the short one and the tall one.

Q Also about 100 feet away at nighttime. Your lights weren't on?

A No.

Q But the windshield wipers were going?

A Yes.

Q There came a time when you changed your mind?

A Right.

Q Did you call that into Pallatroni?

A I don't remember, to tell you the truth.

Q Was your windshield wiper on as they entered the building?

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A I don't remember.

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Q Did you testify before that you had a recol-

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lection that the windshield wipers were off?

5

A To leave them off until there was some

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activity and put them on to see what was going on.

7

Q Did you tell Mr. Fisher when you were questioned

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before that the windshield wiper was off?

9

A When the Pontiac pulled up?

10

Q Yes.

11

A Yes.

12

Q Also off at the time that Papa passed in front

13

of your car, is that correct?

14

A The car was moving. I don't remember how hard

15

it was raining.

16

Q Where was your car parked at the time the car

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that DiNapoli and Papa came up and ultimately parked?

18

A Right across the street.

19

Q There came a time when Papa passed in front of the

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car, is that right?

21

A My car, yes.

22

Q At that time your windshield wiper was off?

23

A We changed our position. We started the engine

24

and got up and made a U-turn behind Mr. Papa and he parked the

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car, we double parked next to him.

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2 Q You made your observation of Mr. Papa, your
3 windshield wipers were going?

4 A I suppose we weren't looking through the front
5 window but the side window at Mr. Papa.

6 Q Was it on or off?

7 A I don't remember.

8 MR.BELLER: He asked and answered that and
9 explained it makes no difference.

10 MR. ROSENBERG: I withdraw it.

11 Q I presume that you have carried suitcases in
12 your time, is that correct?

13 A Yes.

14 Q Would you speculate you might have carried
15 a suitcase as heavy as 40 pounds at one time?

16 A I guess so.

17 Q Does that require you, you, carrying a suitcase
18 that weighs 40 pounds with two hands?

19 A I don't think so.

20 Q You don't think so?

21 Would you say that Mr. DiNapoli is a reasonably
22 developed male?

23 A Yes.

24 MR.BELLER: I object, your Honor.

25 THE COURT: Yes, sustained.

1 arbr
2 Q When you allege that the person carrying the
3 suitcase was carrying it with two hands, was he carrying
4 it in front of him so that as he walked his knees would
5 bunk into it?

6 A No, sir.

7 Q Was he carrying it to the left side of him
8 or to the right side of him?

9 A I believe to the left side of him.

10 Q Are you certain?

11 A No, sir.

12 Q Did they at any time get closer than 100 feet
13 when you made your initial observation, what you say
14 appeared to be a male carrying it with two hands?

15 A No.

16 Q So the closest distance of your observation
17 that rainy night was 100 feet away, was that right?

18 A Right.

19 THE COURT: That is repetitious and he just
20 told you that. There is no jury and I heard it the first
21 time.

22 MR. ROSENBERG: I have no further questions,
23 your Honor.

24 MR. LAIFER: I have one or two, Judge, shortly.
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Reilly-cross

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BY MR. LAIFER:

Q Officer Reilly, what time was it that Mr. Papa left the house with Mr. DiNapoli?

A Around 9:30.

Q You then started to follow them?

A No, sir.

Q Did you ever follow them?

A Yes.

Q In a car?

A Yes.

Q What time was that?

A 9:33.

Q About three minutes later?

A Right.

Q How many blocks did they go before you eventually stopped them?

A About 8.

Q About 8 blocks in the rain, right?

A Right.

Q Was it raining when they came out of the house?

A Right.

Q When you eventually stopped them was it still raining?

1
2 A Right.

3 Q Now, in the eight block trip did you ever lose
4 sight of them?

5 A No.

6 Q Where was your car with relation to theirs?

7 A As it started off, Mr. Papa's car, the
8 special agent Pallatroni's vehicle and myself and Detective
9 Spurdis behind Special Agent Pallatroni.

10 Q You followed the car for eight blocks and
11 there was no stop for any red lights, is that correct?

12 A No, we made the light at Morris Park Avenue and
13 that was the only light.

14 Q Was Mr. Papa's car going within normal speed
15 limits?

16 A A little slower because of the weather.

17 Q Was there other vehicle traffic on the street
18 on that particular evening?

19 A No, sir.

20 Q Just your cars and theirs?

21 A That is right.

22 Q What was the distance of your car from Mr.
23 Papa's car during this trip?

24 A About six car lengths I guess.

25 Q Were you directly behind him?

1 A No, we were directly behind Special Agent
2
3 Pallatroni as he started off.

4 Q How far was Officer Pallatroni from Mr. Papa's car
5 during this trip?

6 A Two or three car lengths.

7 Q So that Officer Pallatroni's car was
8 closer to Papa's car than yours?

9 A That is correct.

10 Q Your vehicle, the three of you, were the only
11 vehicles riding on the road that particular evening?

12 A Right.

13 Q You had your lights on, is that correct?

14 A Right.

15 Q And Papa had his lights on?

16 A I suppose so.

17 Q You could see that, couldn't you?

18 A Yes.

19 Q There came a time when you received a call over
20 the radio and that call was to stop the car, to that effect?

21 A Yes.

22 Q What were the exact words again?

23 A "Take the car."

24 Q You then drove up and displayed a shield?

25 A Right.

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Q Who was the driver of the Papa's car?

3

A Mr. Papa.

4

Q Where was the other individual seated?

5

A In the front passenger seat.

6

Q At that point could you see into the car?

7

A No, sir.

8

9

Q Did Mr. Papa look in your direction when you put your shield up?

10

A Yes, sir, he did.

11

Q Did he then pull over?

12

A No, sir.

13

Q What happened then?

14

A He continued on up and I shouted again.

15

Q He pulled over?

16

A Right.

17

18

Q Was it raining at that time, isn't that correct?

19

A Yes.

20

Q When you first showed the shield?

21

A Yes.

22

Q And it was dark out?

23

A Yes.

24

Q You weren't in a marked police car?

25

A Right.

Q After Mr. Papa pulled his car over to the side of the road -- and by the way, did you see Mr. Papa originally get into his car?

A Yes.

Q You did see him get in?

A Yes.

Q You saw Mr. DiNapoli get in originally?

A Yes.

Q Originally?

A Yes.

Q Where was the suitcase placed?

A In the back of the vehicle.

Q You saw that take place?

A Right.

Q When Mr. Papa and Mr. DiNapoli were stopped, did they get out of their car?

A Mr. Papa did.

Q What happened then? Did you go over to Mr. Papa or did he come over to you?

A He came to us.

Q Did you identify yourself as a police officer?

A Yes.

Q Was your superior officer present at that time?

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Reilly-cross

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A Pulling in behind me and Mr. Papa.

Q Did you then walk over to the vehicle where
Mr. DiNapoli still was?

A No.

Q Who did?

A Special Agent Pallatroni and Spurdis.

Q You saw what took place?

A I saw Mr. DiNapoli being taken out of the car.

Q He was removed from the car?

A Right.

Q How much time elapsed from the time Mr. DeNapoli
was removed from the car until the green suitcase was
removed from the car?

A A matter of seconds.

Q But Mr. DiNapoli had been out of the car before
the suitcase was removed, is that correct?

A That is correct.

Q To your knowledge on that evening was there a
search warrant for Mr. Papa or Mr. DiNapoli at that time?

A No, sir.

Q To your knowledge was there any search warrant
for the vehicle itself?

A No, sir.

Q Was there any arrest warrant for either

Mr. Papa or Mr. DiNapoli?

A No, sir.

Q There was a hiatus period of time after Mr. DiNapoli was out of the car that this suitcase was removed from the car, is that correct?

A A few seconds, yes, sir.

Q Will you estimate for Judge Briant how many agents were present on the scene after Mr. DiNapoli was out of the car? I also mean police officers.

THE COURT: Don't estimate it, give us your best recollection.

Q Yes?

A Four of us.

Q Four officers present?

A Right.

Q No question of anybody coming and stealing the car, is that correct?

A Right.

Q From you?

A Right.

Q Did anybody think of going down to courthouse for a search warrant?

THE COURT: I think what happened after isn't of any relevance, is it?

MR. LAIFER: I have no further questions.

MR. FISHER: I have some other questions which I would like to ask in view of some of the questions just asked, which would precede the area of the communications.

THE COURT: Well, I don't think so at this time, Mr. Fisher. I want to see if anybody else has any matters.

Mr. Lopez?

MR. LOPEZ: No questions.

MRS. ROSNER: No questions.

THE COURT: If you can show me something of importance that you missed I will let you bring it up.

MR. FISHER: Something, your Honor, that came out as a result of certain questions put by Mr. Rosenberg which was contrary to the testimony that was established previously.

THE COURT: Very briefly, Mr. Fisher.

BY MR. FISHER:

Q Mr. Reilly, at the time Mr. DiNapoli and Mr. Papa exited 1908 Bronxdale Avenue, at the time they got out of that door, they are in a position of elevation as to you, on the stoop?

A Yes.

Q They were looking down?

1
2 A True.

3 Q You had been waiting there a couple of hours
4 already in the rain?

5 A Right.

6 THE COURT: This is all repetitious.

7 Come to the point.

8 Q You see the suitcase?

9 A Right.

10 Q This was probably in your mind the most
11 critical moment of the surveillance thus far?

12 A Right.

13 Q So at this point in time you were particularly
14 careful not to disclose your presence there?

15 A Right.

16 Q So did you previously testify here you didn't
17 have your windshield wipers on because it would put them
18 on -- would have been to alert possibly --

19 MR. BELLER: I object to this.

20 THE COURT: Sustained. You may ask whether
21 the windshield wipers were on or off.

22 Q In that context.

23 THE COURT: If you are going to form questions
24 like that in a jury case you and I are going to have a
25 conflict.

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Reilly-cross

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MR FISHER: I will abide by your Honor's ruling.

Q At this point in time they were standing up there on the stoop, did you have your windshield wipers on?

A We turned them on to clear the windshield.

Q At that point in time?

A Right.

Q How long did you keep them on?

A A couple of seconds.

Q You turned them off?

A Right.

Q Were they off before DiNapoli and Papa got to the bottom of the steps?

A Right.

THE COURT: How about this log? Can we proceed with the log on the tentative representation made?

MR. BELLER: I really believe this is fully accurate and fully complies with the request Mr. Fisher made.

THE COURT: When will you know for sure?

MR. BELLER: As soon as I have a chance to talk to the agents.

THE COURT: I am going to suggest, Mr. Fisher,

1
2 you proceed with the redacted log which may be marked for
3 identification and if the government representation turns
4 out to be improvident, you can advise them by 2:15 today.

5 MR. BELLER: Can I have this marked as
6 Government's Exhibit 2?

7 (Government's Exhibit 2 was marked for
8 identification.)

9 MR. LOPEZ: I have just one question.

10 BY MR. LOPEZ:

11 Q Officer Reilly, on the day in question,
12 February 3, 1972, did you ever call Agent Pallatroni and
13 indicate to him you made a mistake, it wasn't Papa carrying
14 the suitcase but was the other individual?

15 A No, sir, I didn't.

16 THE COURT: That was asked and answered.

17 MR. LOPEZ: Thank you.

18 THE COURT: All right, Mr. Fisher, you may
19 proceed with the log. You understand that Mr. Beller will
20 confirm the complete list and accuracy of the representation
21 by 2:15.

22 MR. FISHER: I would ask that the government
23 furnish your Honor with the complete portion so that the
24 Court has it in its file.

25 THE COURT: You indicated to me a moment ago

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Reilly-cross

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2 if he made such a representation you would accept it.

3 MR.FISHER: I accept it, your Honor.

4 THE COURT: He can't make it yet but he is making
5 it tentatively. There is no need for me to have the
6 log if you accept his representation.

7 MR. FISHER: I accept the representation of
8 the United States Attorney. I think the record of the
9 court should have it in a sealed condition in case there
10 is ever any occasion --

11 THE COURT: I will direct him to preserve it.

12 MR. BELLER: I would like to make a statement.
13 There are indications under the heading Message which
14 indicate a 1011 and as I understand it a 1011 is a
15 request for a license plate identification.

16 There are two such 1011 requests the response
17 to which the government has redacted because they don't
18 relate to this investigation.

19 There are two 1011 requests that do relate to
20 this investigation which remain in their original form.
21 I have Xeroxed this about 35 times and have never been able
22 to get a very clear copy but the handwriting is of some
23 relevance so I want to explain to Mr. Fisher exactly
24 what these things say as a true reproduction of the original.

25 (Counsel confer.)

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Reilly-cross

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THE COURT: It is not intended to exclude other counsel from such explanation.

MR. BELLER: I can do it on the record.

THE COURT: I think maybe you should. Would you like this witness excused while he does this?

MR. FISHER: I would appreciate that.

(Witness leaves the courtroom.)

MRS. ROSNER: Your Honor, other counsel would like an opportunity to see the log before any questions are asked and I wonder if we could recess now as it is ten to one.

THE COURT: It is very hard for me to say no to these requests but, you see, my time is so pressed, I have so many different matters and I can't resume until 2:15 and I think an hour and a quarter is ample time for a luncheon recess for you and I really would like to break at 1 o'clock.

MRS. ROSNER: It is not the length of the recess but I personally would like an opportunity to inspect it.

THE COURT: You'll have an opportunity to see it before this witness is excused.

Make your representations.

MR. BELLER: The log indicates a 1011

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reference to an entry at 847, sir?

A Yes.

Q You recognize that, do you, as the log of communications kept at 201 Varick Street, February 3, 1972?

A Yes, I do.

Q The government has represented, sir --

THE COURT: Just ask the questions, won't you, please?

Q Does the entry at 8:47, 38944 New York Dealer, Wides Motor Sales, Far Rockaway, does that refresh your recollection as to the precise point in time the information regarding the registry of the Papa vehicle came back?

A Yes.

Q This came back over the radio which both you and Pallatroni could hear?

A Yes.

Q You were hearing the same thing?

A Yes.

Q You were told Wides Motor Sales, isn't that right?

A Right.

Q Nothing about leasing, isn't that right?

A Right.

Q With regard to the next entry at 1011 -- what

time was the arrest made in this case?

A 9:35.

Q At 1011 where were you?

THE COURT: Is this 10:11 p.m.?

MR.FISHER: Yes.

THE COURT: All right.

Q You testified before, sir, that the vehicle information regarding Murray Richmond did not come back until the following day, isn't that right?

A Right.

Q The fact that it is noted on this document, does that refresh your recollection as to the fact that it was provided to you on the night of the arrest?

A It was not.

Q It was not?

A It was not.

Q Are you certain of that?

A I am positive of it.

Q Are you able to read the entry marked next to 10:11, sir?

A It only goes to 9:12.

Q Is there an entry next to 10:11?

MR. BELLER: That only goes up to 9:15.

MR.FISHER: I am sorry, 9:15.

My notes are inaccurate.

10/24
Papa
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Reilly-cross

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Q That was before the arrest, wasn't it?

A Right.

Q And next to the entry at 91 it states, does it not, "176 MR 72" and 176 MR was Murray Richmond's license plate, right?

A Right.

Q "Pont., 4 dr. 6 sedan, BRN, EXP 372, Murray Richmond, New City," and then a date of birth, something like that?

A It did not come back that night. It was filled in at a later date. It did not have that information.

Q It was filled in at a later date?

A Which is policy.

Q Were you there when it was filled in at a later date?

A No, I wasn't.

Q Why were you unable to get that information from the computer that night, sir?

A I don't know. You would have to ask the base radio operator.

Q But you did hear that the information was requested, isn't that right?

A Yes, I believe I requested it.

Q And you are telling us now that that information

2 was filled in on a date subsequent to the date it pretends to
3 be, is that right?

4 A As a matter of policy, yes.

5 Q As a matter of policy that is done, right?

6 A Right.

7 THE COURT: But you didn't do it?

8 A No, sir.

9 Q And you weren't there when it was done?

10 A No, sir. I wasn't.

11 Q So, you don't know when that was put in, isn't
12 that right?

13 A I do not.

14 THE COURT: I may have lost the significance of
15 it.

16 Let's assume that the entry was made before the
17 arrest.

18 MR. FISHER: If, in fact, your Honor, the entry
19 was made before the arrest --

20 THE COURT: Did you know Mr. Murray Richmond at
21 that time?

22 THE WITNESS: I had seen him before at the cas
23 of Joseph Di Benedetto in the Bronx Criminal Court.

24 THE COURT: Before this arrest?

25 THE WITNESS: Yes, sir.

1 JBd3

Reilly-cross

2 THE COURT: Then you knew whose car it was,
3 didn't you?

4 THE WITNESS: No, sir, I had no reason to write
5 down Murray Richmond's plate number before that.

6 THE COURT: But you saw him get into the car?

7 THE WITNESS: I saw a male get into the car.

8 THE COURT: But you didn't know it was Murray
9 Richmond?

10 THE WITNESS: No, sir.

11 Q And you knew he was a lawyer?

12 A Yes.

13 THE COURT: The question is, when you saw the
14 male get into the car, did you recognize him as the person
15 you had met before?

16 THE WITNESS: I did not, sir.

17 Q At the time of the arrest, sir, you had no idea,
18 really, as to what the content of that suitcase was, isn't
19 that right?

20 A Correct.

21 Q When you got out of your car, your intention was
22 to follow the direction of Mr. Pallatroni to effect an arrest,
23 a full-blown arrest, no traffic infraction or anything of the
24 sort, isn't that right?

25 MR. BELLER: I think we have been into this many

1 JBd4

Reilly-cross

2 times before.

3 THE COURT: I am not certain that he has really
4 told us in that many words, but that is what the Court would
5 find his intention to have been on the basis of the record
6 before me, that he was effecting a narcotics arrest.

7 I suppose every arrest is a full-blown arrest.

8 MR. FISHER: Then I withdraw the question, your
9 Honor.

10 THE COURT: All right.

11 Q In response to questions put to you by
12 Mr. Rosenberg, I take it that you indicated--

13 THE COURT: Don't summarize prior testimony.
14 If there is an answer here that you think is different from
15 something the Court has heard today, confront him with it.
16 Ask him, "Do you recall being asked this question and giving
17 that answer," but don't put in preliminaries to waste time.

18 Give us the page and line number.

19 Q Do you recall, sir, at the Tramunti proceeding
20 giving a demonstration of the manner in which you say you
21 saw Mr. Di Napoli carrying the suitcase out of 1908 Bronxdale
22 Avenue?

23 A Yes, I do.

24 Q Do you recall, sir, specifically demonstrating
25 that the suitcase was held with two hands in front of

1 JBd5

Reilly-cross

2 Mr. Di Napoli?

3 A No, sir, I do not.

4 MR. FISHER: If your Honor please, I offer page
5 34 through 35 of the transcript of proceedings in the United
6 States against Tramunti which states as follows, after the
7 demonstration:

8 "Mr. Phillips -- "

9 MR. BELLER: I think everyone can read it, your
10 Honor. The Court can read it.

11 MR. FISHER: It's only a paragraph.

12 THE COURT: The only question is whether it is
13 going to be suggested to the witness; that's all.

14 If you have finished with him, I will let you
15 read it. Otherwise, go to something else.

16 MR. FISHER: I am, your Honor.

17 THE COURT: You want to offer Mr. Phillips
18 commenting beginning on page 34?

19 MR. FISHER: Yes.

20 "May the record reflect that the suitcase was
21 carried in front of Officer Reilly and was carried with both
22 hands and also may the record reflect that the gait used by
23 Officer Reilly was greater than the gait, that is, he walked
24 at a faster pace than on the previous occasion."

25 THE COURT: "Previous demonstration."

JBd6

Reilly-cross

MR. FISHER: Yes, your Honor. Thank you.

One other question not related to this.

MR. BELLER: I object.

THE COURT: That's what my copy says.

MR. BELLER: As I understood Mr. Fisher, he said he was finished with the witness and that is why he was reading this.

THE COURT: I thought he was finished.

MR. FISHER: As I read it, one other question came to mind.

MR. BELLER: I object, your Honor.

THE COURT: What is the question?

MR. FISHER: The question is, at the time of the demonstration did he walk with a crouch as he is trying to tell us he observed Mr. Di Napoli doing here.

THE COURT: All right. I will let him be asked that.

Q At the time you demonstrated how he carried the suitcase out before Judge Kevin Duffy in the United States against Tramunti, did you walk with a crouch?

A I believe I was slightly hunched.

Q Slightly hunched? But the record didn't -- withdrawn.

THE COURT: All right.

JEd7

Reilly-cross-redirect

Are we finished with this witness?

Do you have redirect testimony?

MR. BELLER: I have some very brief redirect.

REDIRECT EXAMINATION

BY MR. BELLER:

Q Just so that the record is completely accurate --

THE COURT: No speeches.

Q You were asked on the cross-examination whether you had referred to documents or records in preparation for your testimony and you said you did not.

You did, however, look at this copy of your testimony in the Tramunti hearing in preparation for this hearing, is that correct?

A Yes, sir.

Q Would you describe the lighting conditions on the evening of February 3 with respect to the premises 1908 Bronxdale Avenue?

A Well, there is a small lamp on the top of the stoop at 1908, or there was then, and as far as street lights go, I believe at least three of the four corners at Rheinlander and Bronxdale have street lights, if I am not mistaken.

The lighting was good.

Q At some point in your testimony you were asked

JBd8

Reilly-redirect

whether you were in charge of making the radio calls and you said that you were or that you did make all such calls.

Do you remember that testimony?

A Yes.

Q Were you referring to the entire group or to your car?

A To my car.

THE COURT: That's obvious, I think.

MR. BELLER: All right.

Q I believe you were asked about windshield wipers and --

THE COURT: Please just frame a question.

This business of summarizing prior examination I will not permit by anybody.

Q I am interested in the AC. There was a reference to AC with respect to windshield wipers and I would ask you to explain that.

A Well, if you want to keep --

MR. BELLER: Withdrawn.

Q Is it possible to put the windshield wiper on in the car without having the motor on?

A Yes.

Q How is that done?

A By putting it on alternate current, alternating

JBd9

Reilly-redirect

current.

Q Sorry?

A I don't know if it's alternate or alternating current.

Q Did you use the alternating current or AC?
Is that AC?

A Yes.

Q Did you use that AC that evening, February 3,
in conducting the surveillance?

A You have to use it to keep the radio going.

Q Was the AC on all night?

A Yes.

Q Could you turn on the windshield wipers at any
time?

A Yes.

THE COURT: This is on your ignition key and
when you turn it to the left, instead of the right --

THE WITNESS. Yes.

THE COURT: What kind of car was this that you
had?

THE WITNESS: It was a 1971 Dodge, two-door.
I forget the model. It was green.

THE COURT: And this ignition key you turn to
the left where it said ACC on it?

JBd10

Reilly-redirect

THE WITNESS: Right, sir.

Q I show you Government Exhibit 2. You didn't make the entry "Wides Motor Sales," did you?

A No, sir, I didn't.

Q Is it possible you don't know when that entry was made?

A No, sir, I don't.

Q Is it possible you got over the radio, "Wides Leasing Company"?

MR. ROSENBERG: Objection, if your Honor please.

THE COURT: Sustained.

He can be asked his best recollection as to whether he received it but not to speculate on whether it is possible or impossible.

MR. BELLER: Your Honor, I do have one other question and it requires my looking through the records for some previous testimony at the Tramunti hearing and if I find it, I would just like to ask that question. Otherwise, I would be finished with the witness.

So, I would ask that perhaps when we return I could ask that one question.

THE COURT: It may not be necessary but let's see.

We will recess for lunch. I guess you will have

1 JBdl1 Reilly-redirect

2 to come back, Mr. Reilly.

3 2:15, gentlemen.

4 MR. FISHER: If your Honor please, would the
5 Court direct the government to direct its witnesses not to
6 speak to each other with regard to the facts in this case
7 from this point on.

8 THE COURT: I decline to make any such direction.
9 However, any witness who is cross-examined may properly be
10 asked who he has discussed the case with and when, but I
11 won't make any such direction.

12 (Luncheon recess.)

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2 AFTERNOON SESSION

3 (2:15 p.m.)

4 THE COURT: Are we ready to resume?

5 MR. BELLER: Yes, your Honor.

6 The government calls --

7 MRS. ROSNER: Before the Court proceeds, may I
8 ask that the record indicate that Mr. Stanzione is now
9 present in court pursuant to your Honor's direction?

10 THE COURT: All right, fine. Where is he?

11 MRS. ROSNER: Right there.

12 THE COURT: Have you instructed your client as
13 to the Court's view as to the presence of defendants when
14 hearings or pretrial conferences are taking place?

15 MRS. ROSNER: Yes. I told him it was your
16 Honor's desire that all parties be present.

17 THE COURT: Attendance is considered by me as a
18 condition of bail.

19 Do you understand that, Mr. Stanzione?

20 DEFENDANT STANZIONE: Yes.

21 MR. FISHER: If your Honor please, may I make an
22 application?

23 THE COURT: Yes.

24 MR. FISHER: With regard to Government's Exhibit
25 2, that log, in view of the fact that an allegation has been

1 SLd2

2 made that an entry has been made out of time, and in view
3 of the fact that from any reasonable look on this sheet,
4 there is really nothing on there, there is no secret or
5 important information, I think the original should be
6 entered into evidence, your Honor, so your Honor can look at
7 the writing and you can sometimes tell from the way things
8 are written, the printing, whether or not the same pen was
9 used; and I think if your Honor would look at that sheet,
10 your Honor will come to the conclusion that perhaps the
11 entries were written when the document says they were
12 written pursuant to law and not in violation of law at a
13 later time.

14 THE COURT: Of course, this witness has no direct
15 knowledge at all about the log.

16 MR. FISHER: Yes, your Honor.

17 THE COURT: All he was attempting to do was to
18 give us his view of the custom and practice as he understands
19 it to be. So there is no competent evidence now which makes
20 the log other than a regularly kept log in the ordinary
21 course of the government's business --

22 MR. FISHER: I withdraw my application, your
23 Honor.

24 THE COURT: Please let us talk one at a time.

25 MR. FISHER: I'm sorry.

1 SLd3
2 THE COURT: I am most reluctant to take evidence
3 ex parte and consider it as evidence in chief in this
4 hearing when that evidence is not available for confrontation
5 purposes by the movants here.

6 You see, it is one thing to look at an original
7 document in camera and see if it is properly redacted. That
8 I am always willing to do, there is no problem with that,
9 but as far as looking at the original to see what weight
10 should be given to it, when you and your colleagues of the
11 defense are not permitted to look at it, that seems to me
12 to be inappropriate.

13 My present view of the record is that the log is
14 presumed to be correctly and properly kept.

15 The hearing is not closed yet, and it is
16 competent for the government, if they are concerned, or have
17 a different view of the matter, to bring in the person making
18 the entry and tell us when he made the entry, and you may
19 cross-examine him on it.

20 Is my position clear to you on that?

21 MR. FISHER: Yes, your Honor. I appreciate that.

22 MR. BELLER: Your Honor, with respect to that
23 document, there is an additional entry just made.

24 After conferring with the agents, one of the
25 remarks for a 1011 or a request for a license number turns

1 SLd4

2 out to have been related to the surveillance.

3 THE COURT: Of these particular premises?

4 MR. BELLER: That is correct.

5 So we added that, and now the government is
6 ready to make the full representation that this sheet
7 represents full compliance with what Mr. Fisher has asked for.

8 THE COURT: Well, Mr. Fisher has indicated he
9 will accept that representation, and, of course, there is no
10 reason why he should not do so, but there is open for me
11 still, and I am somewhat in the dark as to the true signi-
12 ficance of this entry, as to what each of you regard to be
13 the significance of this entry.

14 MR. BELLER: Well, we are prepared to meet that
15 later at the end of the hearing.

16 MR. FISHER: I am prepared to discuss that now
17 if your Honor would prefer.

18 THE COURT: Well, very briefly, if you will.
19 I don't insist, but I would like to know at some point.

20 MR. FISHER: Yes, your Honor.

21 Mr. Pallatroni testified at the previous proceed-
22 ing that he didn't know that the 176 MR plate belonged to
23 Murray Richmond until the following day. He said the reason
24 he didn't know that is, although we tried to get the
25 information, he was advised that the computer in Albany had

1 SLd5

2 broken down.

3 Mr. Reed, however, testified at the prior pro-
4 ceeding that, in fact, they did get that information prior
5 to the arrest; that they did know prior to the arrest that
6 car belonged to Murray Richmond --

7 THE COURT: There is nothing in this entry
8 which would tell him anything more than that the car
9 belonged to Murray Richmond, and his date of birth and his
10 home address in Rockland County.

11 MR. FISHER: But thanks to your Honor,
12 Mr. Reilly knew that Mr. Richmond was a lawyer.

13 THE COURT: But it is not necessarily clear
14 that Mr. Reilly knew that it was the same Murray Richmond
15 who was born in 1937 and lived in Rockland County. I assume
16 the telephone book both in Rockland County and the city
17 here has more than one Murray Richmond in it. That would
18 be my guess, anyway.

19 MR. FISHER: Yes, your Honor, but this is part
20 of a puzzle that we are trying to construct here.

21 THE COURT: All right, you can keep constructing.
22 All right, call your next witness, please,
23 Mr. Beller.

24 MR. BELLER: Peter Pallatroni.
25

P E T E R P A L L A T R O N I, witness called on behalf
of the government, being first duly sworn, testified
as follows:

THE COURT: All right, Mr. Beller, you may
proceed.

MR. BELLER: Thank you.

DIRECT EXAMINATION

BY MR. BELLER:

Q Mr. Pallatroni, are you presently employed?

A I am presently employed as an inspector with
the Drug Enforcement Administration, assigned to Washington,
D.C.

Q How long have you been assigned to Washington?

A Since July of this year, sir.

Q Prior to that, how were you employed?

A I was a group supervisor for the Drug Enforcement
Administration from February of 1970.

Q As of February 3, 1972 how long had you been
employed as a law enforcement official?

A Since November of 1965, starting with Customs,
as a Customs port investigator, and from May 1966 to
February 1965 as a special agent with the then Federal
Bureau of Narcotics & Dangerous Drugs.

MR. FISHER: Did you mean February 1973 rather

1 SLd7

Pallatroni-direct

2 than 1965? You said February 1965.

3 THE COURT: Don't interrupt him, Mr. Fisher.

4 I will let him correct his answer, but when he gives an
5 incorrect answer, you can cross-examine when your turn
6 comes.

7 What are the proper dates?

8 THE WITNESS: I was a Customs port investigator
9 from November 1965 through May 1966.

10 From May 1966 to the present I've been employed
11 with the then Bureau of Narcotics & Dangerous Drugs, now
12 known as the Drug Enforcement Administration.

13 BY MR. BELLER:

14 Q In your capacity as a supervisor, a group
15 supervisor, how many agents did you have working under you?

16 A Including myself I believe there were eleven at
17 the time.

18 Q What jurisdictions were they from?

19 A We had the New York Task Force, federal agents,
20 state police officers and New York City Police officers.

21 Q Where were you headquartered on February 3, 1972?

22 A I was assigned to the Task Force which was
23 located at 201 Varick Street here in Manhattan.

24 Q Were you on duty on that day?

25 A Yes, I was.

1 SLD8 Pallatroni-direct

2 Q Did you report to Varick Street?

3 A Yes, sir, I did.

4 Q And approximately what time?

5 A I don't recall what time I reported there, sir.

6 I would say 10:00 in the morning perhaps, but I don't recall
7 the exact time I reported.

8 Q Were you working as well on the evening of
9 February 3?

10 A Yes, sir, I was.

11 Q Did you have occasion to meet with your group?

12 A Yes, at approximately 6:00 or 6:30 p.m. I had
13 a meeting with some members of my group.

14 Q What happened at that meeting?

15 A As a result of that meeting I instructed
16 Detective John Spurdis and Patrolman George Reilly to go to
17 the Bronx and attempt to locate and identify a subject we
18 knew as John Doe Number 3, who was connected with the Frank
19 Facciano investigation.

Facciano?

20 Q What did you know, what was in your mind at the
21 time with respect to John Doe 3?

22 A Well, at the time I knew that on September 2,
23 1971 Detective Spurdis had seen John Doe Number 3 in the
24 company of Frank Facciano at the Cottage Inn Bar at Van Nest
25 Avenue in the Bronx. That part of the conversation was over-

SLd₉ Pallatroni-direct

heard where Facciono said, "I will need another eighth."

They went into the back room of said bar, and then they went out in the street, and they both came back into the bar, and as they were walking into the bar, Facciono handed a package to John Doe Number 3, a brown paper bag, and he asked Facciono -- he stated to Facciono, "Is it all there?"

And then they went back into the rear room and Detective Spurdie heard what he thought was paper being crumpled.

And I had a description of John Doe Number 3 that he was a white male, 35 or 36 years old, approximately six feet tall, 185 pounds with grayish hair.

Q Did anything else happen with respect to these events on that date?

A Specifically, later on in the evening we arrested one James Cursi with an eighth of a kilogram of heroin which he had received from Frank Facciono.

Q How do you know of the events that occurred in the bar?

A Detective Spurdie had informed me of this, sir.

Q Was Frank Facciono subsequently arrested?

A Yes, he was.

Q When was that?

SLd10

Pallatroni-direct

A January of 1971 -- 1972, excuse me.

Q On February 3 did you have occasion to leave Varick Street?

A Yes, sir, I did.

Q Where did you go?

A I went to the Borough of the Bronx.

Q What were your duties that evening?

A I was supervising various activities that members of my group were participating in.

Q And is it correct that thereafter these were related to the Facciono investigation?

A Yes, sir, that is correct.

Q And were Officer Reilly and Detective Spurdis in your group at the time?

A Yes, they were.

Q Did you receive a radio communication from there some time that evening?

A Yes, sir at approximately 8:45 p.m. I received a radio message from Patrolman Reilly and he stated that they were at 1908 Bronxdale Avenue; that they had observed an automobile park in front of 1908 Bronxdale Avenue, a man got out of the car carrying a suitcase and went into the building.

Q Now, what was the significance in your mind of

the address 1908 Bronxdale Avenue?

A 1908 Bronxdale Avenue had come into our investigation and Frank Facciono on a couple of occasions.

During the course of time we were negotiating with Facciono he met an individual who was utilizing the vehicle that was registered to Genevieve Papalano at 1908 Bronxdale Avenue.

Q When you say 1908 Bronxdale Avenue, what was at 1908 Bronxdale Avenue?

A The house, 1908 Bronxdale Avenue, the residence.

Q Where was this conversation?

A This was in the vicinity of a Cottage Inn Bar.

(Continued on next page.)

T2 pm

1
2 Q Were there any other connections between 1908
3 Bronxdale Avenue and the investigation?

4 A Some time in the fall of 1971 we arrested
5 Joseph DiBennetto after he came out of 1908 Bronxdale
6 Avenue and entered a stolen car. At the time he gave 1908
7 Bronxdale Avenue as his address, which was later found
8 was erroneous.

9 THE COURT: You say later. When did you find out
10 it was erroneous?

11 THE WITNESS: Shortly thereafter, your Honor.

12 THE COURT: Within a week or a month?

13 THE WITNESS: I couldn't be sure of the date but
14 we knew about it prior to February 3rd. I would say a month
15 at the most.

16 Q Who was it that called you from the Spurdis-
17 Reilly car?

18 A Police Office Reilly used the radio.

19 Q Did he say anything about the identify of the
20 individuals he had seen going into 1908 Bronxdale Avenue?

21 A He indicated the identify of the second individual
22 the second man out of the car and going into 1908 Bronxdale
23 Avenue as a VIP, the old man.

24 Q What did you do then?

25 A I then proceeded to the vicinity of 1908 Bronxdale

Avenue.

Q Did you have a conversation there?

A I had a conversation with Detective Spurdis at the time I arrived.

Q What did you learn?

A That is basically the same thing with certain additional information. Both Spurdis and Reilly identified Vincent Papa.

Q Had you heard about Papa before?

A He was known to me and my agency.

Q In what way was he well known?

A I had known that Vincent Papa had an arrest record dating back to I believe 1938. In the 1950s he had been arrested and convicted of violation of the federal narcotic laws and served five years in the penitentiary.

I also had observed Vincent Papa on surveillance in 1967 when I had followed Faccione on Steinway Street in Queens. I identified the driver of the vehicle circling the area and observed these men in conversation to be Vincent Papa.

I was aware in the 1950s that Mr. Papa was associated with Anthony Parisi and Victor Panico, both convicted for violation of the federal narcotic laws.

And I had additional information at my disposal

1 arh 3

Pallatroni-direct

2 from an informant by the name of Stanton Garland that
3 we had arrested on December 18th I believe 1971, where
4 Mr. Garland said he was receiving narcotics a kilogram
5 quantity of heroin from Rocco Evangelista and Daniel
6 Ranieri and their source of supply was Vincent Papa and
7 this informant met Papa once in Las Vegas and had a conver-
8 sation about narcotics.

9 On another conversation the informant met Mr.
10 Papa in Prudenti's Bar where there was an additional conver-
11 sation about narcotics.

12 All of the information supplied to me by this
13 informant, I made some inquiries and determined that Mr.
14 Papa along with another of other defendants were the
15 subjects of a sealed indictment which was filed in the
16 Eastern District of New York for conspiracy to violate
17 the federal narcotic laws.

18 Q Did you take any further steps to determine
19 the reliability of the information provided by Mr. Stanton
20 Garland?

21 A Yes, we did.

22 THE COURT: You say a sealed indictment. Am I
23 to understand that there was a warrant outstanding for his
24 arrest?

25 THE WITNESS: There was a sealed indictment which

prior to the best of my recollection on February 3rd was unsealed and arrests were made.

Q Did you take any further steps to determine the reliability of the information provided by Stanton Garland?

A On one occasion. Mr. Garland was shown 16 photographs and he identified six of them correctly. Two of them being two photographs of Rocco Evangelista and two of Daniel Ranieri.

I also through Mr. Garland obtained Mr. Evangelista's telephone number and address, which proved to be accurate.

Q I am not sure whether you testified as to the connection if any between Evangelista and Vincent Papa and Stanton Garland.

A Mr. Garland advised us that Rocco Evangelista and Daniel Ranieri obtained their narcotics from Papa.

Q You mentioned something about a conviction of Papa in the '50s. Did you have occasion to learn anything about the substance of that charge and that conviction?

A Yes. It was Mr. Papa, if my memory serves me correctly, had either --

MR. FISHER: Objection, this relates to 1950.

THE COURT: I think the witness is telling us this

1 is prior to February 3rd.

2 MR. FISHER: This is 1972 and he is talking
3 about a conviction that occurred in 1950, your Honor.

4 THE COURT: The weight to be given to this is
5 a matter for the court. If he actually knew this or
6 looked it up before February 3rd I think he can testify.
7 It may not have any significance but the witness is showing
8 everything that he relied on.

9 We are only asking for your knowledge as of
10 February 3rd.

11 THE WITNESS: Yes, your Honor.

12 Q The question was the substance of the charge
13 for which Mr. Papa was convicted in the 1950s.

14 A To the best of my knowledge it was possession
15 and sale of heroin and I believe at the time of Mr. Papa's
16 arrest, he either had five pounds or five kilos of heroin.

17 Q Was Mr. Papa known to your office, generally?

18 A Yes, sir. Mr. Papa was considered a rather
19 substantial violator to the Bureau of Narcotics and Dangerous
20 Drugs.

21 Q What did you do after the conversation with
22 Spurdis?

23 A Well, after the conversation with Detective
24 Spurdis, I obtained through our base station the license
25

1 arh6

Pallatroni-direct

2 plate of the vehicle that Mr. Papa was using. It was, 3
3 I believe, a 1968 Pontiac and it came back, I was informed
4 by radio, Worldwide Leasing Corporation, Far Rockaway,
5 Queens, or Far Rockaway, New York.

6 We then established surveillance of the area.

7 Q Did you attach any significance to the information
8 you learned with respect to the registration of the Papa
9 vehicle?

10 A Yes, I did. At that time I had information that
11 Mr. Papa owned two vehicles, one being a Mercedes.

12 I was of the opinion, it was my judgment, that
13 they were using that vehicle to hinder anyone from
14 identifying the driver of the vehicle and that if in fact
15 a narcotics deal was transpiring, the vehicle itself would
16 not be forfeited to the government under law.

17 Q As a leased vehicle?

18 A Yes, sir.

19 Q How many narcotic investigations have you taken
20 part in up to that point?

21 A I would have to say a hundred, of substantial
22 stature.

23 Q How many individuals have you arrested for
24 narcotic offenses up to that point, approximately?

25 A Approximately 200.

1 arh7

Pallatroni-direct

2 Q I show you Government Exhibit 2 in evidence.
3 I ask you to look at an entry which it has been stipulated
4 indicates Wides Motor Sales.

5 A Yes, I can see that.

6 Q Have you seen that exhibit before?

7 A Yes, I have.

8 Q Is that a copy of a log of calls to the base?

9 A Yes, it is a copy.

10 Q I ask you whether that refreshes your recollection
11 as to the information you may have received over the radio
12 upon inquiring as to the registration of the green Pontiac?

13 A My recollection is that the base operator advised
14 the units on the streets that Worldwide Leasing Corporation
15 with an address in Far Rockaway, New York.

16 Q Did you have information at that time as to
17 Vincent Papa's residence address?

18 A Mr. Papa to my knowledge was residing in
19 Astoria, Queens.

20 Q Did you have any information as to locations
21 that he may have frequented?

22 A At the time that I was away that Mr. Papa fre-
23 quented Prudenti's Bar.

24 Q Where was that bar?

25 A In Queens. I don't recall the exact location.

1 arh8

Pallatroni-direct

2 And I believe an Astoria social club also in Queens.

3 Q Did you have any information with respect
4 to Mr. Papa's whereabouts in the Bronx?

5 A I never had observed Mr. Papa in the Bronx before
6 and I had no information that he did frequent Bronx County.

7 Q Did you attach any significance to the fact
8 that Mr. Papa was in the Bronx that evening?

9 A Yes, I did.

10 Q What was that?

11 A I felt that Mr. Papa was here in the Bronx
12 at that time to conduct a narcotics transaction.

13 MR. LAIFER: I respectfully move to strike that
14 out. There is no foundation for that. An office can ob-
15 jectively think about many things but there is no foundation
16 for that at this point. It can go on and on.

17 THE COURT: I am inclined to think that there is
18 no basis unless the court can infer there is a basis from
19 all of the surrounding circumstances.

20 However, I will let the answer stand as bearing
21 on his good faith in what he was doing.

22 MR. LAIFER: Yes, sir.

23 Q After learning the registration what did you do
24 next?

25 A We established surveillance of 1908 Bronxdale

1 arh9

Pallatroni-direct

2 Avenue.

3 Q Do you recall where it was that you established
4 surveillance?

5 THE COURT: You established surveillance before
6 you found out about the car, didn't you?

7 MR. BELLER: No, I believe Officer Reilly and
8 Spurdis were on surveillance.

9 THE COURT: I thought that is what he meant by we.

10 A I took up a position where I could see the front
11 of the house, the entranceway of 1908 Bronxdale Avenue
12 with Special Agent James Reed.

13 Shortly after my arrival --

14 Q Let me interrupt you. I would like to establish
15 roughly where you were to the best of your recollection,
16 where you had established surveillance.

17 A I established -- I positioned my vehicle on
18 I believe Rhinelander Avenue. It would have been on, I guess,
19 the south side of Rhinelander -- on the right-hand side
20 of the avenue looking directly at 1908 Bronxdale Avenue.

21 Q Did you have a view of 1908 Bronxdale Avenue?

22 A A clear view of 1908 Bronxdale Avenue.

23 Q What did you observe on surveillance?

24 A Shortly after my arrival there I observed three
25 women exit 1908 Bronxdale Avenue and depart.

1 arhl0

Pallatroni-direct

2 A few minutes later I observed a male individual
3 exit 1908 Bronxdale Avenue, walk across the street out
4 of my view.

5 Q Could we establish the time here, approximately?

6 A It was approximately 9 P.M.

7 I went after this car, I surveilled this car
8 in a northbound direction on Bronxdale right up to what
9 I considered Fordham Road exchange, Pelham Parkway.

10 It made a left on Fordham Road, entered the
11 Bronx River Parkway southbound.

12 Q For the court's information approximately how
13 far distant is it before the entrance to the Bronx River
14 Parkway?

15 A I would say under a mile.

16 Q Then what happened?

17 A He drove south on the Bronx River Parkway
18 and then existed at the Cross Bronx Expressway.

19 Q Approximately how long a journey was that?

20 A To the best of my recollection I would say
21 a little over a mile, a mile and a half; maybe two miles
22 at the most.

23 Q Then what happened?

24 A Once he got off the Bronx River Parkway, at
25 that point he went around the loop, what I call the loop

1 arhl1 Pallatroni-direct

2 and reentered the Bronx River Parkway northbound and
3 that is when I discontinued following him and immediately
4 proceeded back to Bronxdale Avenue.

5 THE COURT: He went off the Bronx River Parkway
6 and then went back on to it?

7 THE WITNESS: Yes, sir.

8 THE COURT: Northbound in each case?

9 THE WITNESS: Southbound and then exited at the
10 Cross Bronx Expressway and, at this point, you can get on
11 the Cross Bronx Expressway or go down to the loop, which
12 I call the loop and go on the Cross Bronx Expressway
13 westbound or continue down a little bit and take the
14 Bronx River Parkway northbound.

15 Q Just for clarification, you followed the car
16 south on the Bronx River Parkway?

17 A Correct.

18 Q Is there a sign at some point that that is
19 the Cross Bronx Expressway?

20 A Yes, the exit is clearly marked.

21 Q The car you were pursuing took this turn off?

22 A Yes, it did.

23 Q Did you follow?

24 A Yes, I did.

25 Q Then there is a loop at that point?

1 arh12 Pallatroni-direct

2 A There is a loop.

3 Q Going around the loop do you then have the
4 choice of going on the Cross Bronx Expressway or the
5 Bronx River Parkway north?

6 A Yes, you do.

7 Q Which route did the car you were following take?

8 A The car that I followed reentered the Bronx
9 River Parkway in a northerly direction.

10 Q You then returned to where?

11 A 1908 Bronxdale Avenue.

12 Q Did you call in the license number of the car
13 you were following?

14 A To the best of my recollection I did.

15 Q Did you learn the identity of the registrant
16 of that car?

17 A Not at that particular time, no, sir.

18 Q But did you subsequently learn the identity
19 of the registrant of that car?

20 A Yes, sir. Either later on that evening or the
21 early A.M. hours of February 4th, I don't recall exactly
22 when. I learned who the registered owner of the car was.

23 Q Before or after the arrest?

24 A It was after the arrest.

25 Q What position did you take when you returned?

1 arhl3

Pallatroni-direct

2 A I took my original position looking at the
3 front door of 1908.

4 Q What happened next?

5 A To the best of my recollection three women
6 returned to the house and entered.

7 At approximately 9:25, two men exited the house
8 and departed I believe in separate vehicles.

9 I went up to the corner to attempt to obtain
10 a license plate but they were already gone and I changed
11 my position I believe to somewhere around Rhinelander
12 Avenue. The front of the house was no longer in my view.

13 Q You could not see the house?

14 A No, sir, I could not see the house.

15 Q What happened next?

16 A Approximately 9:30 I received a radio transmission,
17 I believe Officer Reilly, and he stated that they were
18 out of the house, Vinny Papa was carrying a suitcase with
19 two hands, it is loaded or it is loaded and he is carrying
20 it with two hands.

21 Q What did you understand by the words it is loaded?

22 A It was heavy.

23 Q What did you do next? Was there any further
24 conversation?

25 A I believe it followed "They are moving", "The

1 arhl4

Pallatroni-direct

2 car is moving."

3 I came back down on Bronxdale Avenue and
4 proceeded south and got directly behind the car as it
5 proceeded south on Bronxdale.

6 At one point along the line Detective Spurgis
7 took the point position of the car.

8 Q What do you mean?

9 A The lead car, it was directly behind Mr. Papa's
10 vehicle. Then we continued on Bronxdale to the inter-
11 section of East Tremont Avenue.

12 As the car was about to make the turn onto East
13 Tremont, I instructed Detective Spurdis' unit to take the
14 car.

15 Q Did they?

16 A As we made the turn and approached the car
17 I was a little after Detective Spurdis, he cut in front
18 of Mr. Papa's car and put his right arm out and Mr.
19 Papa moved the car up maybe another eight or ten feet
20 and stopped.

21 Mr. Papa got out of the vehicle. I jumped out
22 of my vehicle and observed that it was Vincent Papa.

23 I shouted instructions to Detective Spurdis,
24 ran around the passenger side of the car and placed Joseph
25 DeNapoli under arrest. At this point I put Mr. DeNapoli

1 arhl5 Pallatroni-direct

2 over a retaining wall --

3 Q Did you instruct Mr. DeNapoli that he was
4 under arrest?

5 A Yes, I did.

6 Q Did you inform him for what reason?

7 A Conspiracy to violate the narcotic laws.

8 Q What happened next?

9 A We put Mr. DeNapoli over a retaining wall
10 and I searched him and didn't find anything and I instructed
11 Special Agent James Reed to secure him.

12 I then turned around and observed Detective
13 Spurdis standing over an open suitcase on the sidewalk
14 and I said "What do we have, John?" He said "Money."

15 I said "Any junk?"

16 At this time I was over it and we found it
17 was all money and I seized the suitcase.

18 Q Did he answer the question is there any junk?

19 A To the best of my knowledge money. I accepted
20 the suitcase and took custody.

21 Q Did you later participate in the counting of
22 the money in the suitcase?

23 A Yes, sir, I did.

24 Q Do you recall the amount?

25 MR. LAIFER: I object, I don't see any relevance

1 arhl6

Pallatroni-direct

2 now that the search is completed. I can't see what
3 bearing it would have. It isn't relevant for this purpose.

4 THE COURT: Is there any dispute about how much
5 money was there?

6 MR. LAIFER: Not as far as my client is concerned.

7 MR. BELLER: I thought this was what we are
8 suppressing.

9 THE COURT: Yes, the money and the suitcase
10 as I understand it.

11 Q Do you recall the amount in the suitcase?

12 A \$967,430, plus one \$20 bill counterfeit.

13 Q Did you have occasion to examine the suitcase?

14 A Yes, I did.

15 Q I show you Government Exhibit 1 in evidence.
16 Do you recognize that suitcase?

17 A Yes, this is the same suitcase that was seized
18 on the night of February. My initials appear on the
19 inside flap.

20 THE COURT: Is the amount of money clear in this
21 case? Is there any dispute about the amount of money?

22 MR. BELLER: I don't believe so.

23 MR. FISHER: We are not conceding that, your Honor.

24 THE COURT: You are not conceding it?

25 MR. FISHER: No, sir.

1 arhl7

Pallatroni-direct
cross

2 MR. LAIFER: Perhaps we ought to have it deemed
3 marked in evidence for the purpose of this proceeding,
4 the amount of money that the government says was there.

5 THE COURT: How much money am I supposed to mark
6 for the purpose of this proceeding?

7 MR. LAIFER: That is a good question, Judge.

8 THE COURT: I think so. Sometimes it doesn't
9 help to object.

10 Q Did you have occasion to determine the weight
11 of the suitcase with the money?

12 A I felt it weighed -- I didn't put it on the
13 scale-- about 40 to 50 pounds.

14 Q Did you have occasion to lift the suitcase
15 that same evening?

16 A Yes, I did.

17 MR. BELLER: I have no further questions.

18 CROSS EXAMINATION

19 BY MR. FISHER:

20 Q Mr. Pallatroni,--

21 THE COURT: Was the money identified on this
22 case in some fashion by initials or tied up or something
23 sealed?

24 MR. BELLER: I believe so. I know that we have
25 photographs of the money that were used in the Tramunti case.

1 arhl8

Pallatroni-cross

2 Judge Duffy didn't want the money in the courtroom.

3 THE COURT: He didn't want the money?

4 MR. BELLER: And take the obligation of securing
5 the money. I think photographs were admitted in evidence
6 and those are part of the record in the Court of Appeals.

7 THE COURT: All right.

8 BY MR. FISHER:

9 Q Mr. Pallatroni, as far as you know Vincent Papa
10 was never observed in Westchester, isn't that right?

11 A To my knowledge, no, sir.

12 Q And if Mr. Papa went to Westchester that would
13 lead you to the conclusion then that he was involved in
14 narcotics activities because he went to Westchester, is
15 that right?

16 A Depending on the circumstances.

17 Q If he had gone to Staten Island that would lead
18 you to the conclusion that he was involved in a narcotics
19 transaction in Staten Island, is that right?

20 A Once again, that would depend on the circumstances

21 Q With regard to your experience as a narcotics
22 officer, were many of the years that you spent in the
23 Department of Justice spent in connection with internal
24 affairs or the federal equivalent?

25 A Many of the years?

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2 Q Some of them in any event.

3 A I was assigned on one occasion for approximately
4 one year. I didn't consider it the internal affairs but
5 my immediate superiors were members of the internal
6 affairs team.

7 Q Weren't you actively participating in regular
8 narcotics investigations and you were participating in
9 corruption type investigations?

10 A On the contrary, sir. Due to the nature of
11 the investigation it was our function to run down narcotic
12 leads that our inspectors came up with during that period
13 of time.

14 Q Wasn't it part of your function to investigate
15 allegations of wrongdoing on the part of your fellow
16 officers at that time?

17 A Myself per se, no, sir. The best way I can explain
18 that is once again our inspectors, while they conducted
19 their own investigations, came up with various leads about
20 narcotics violators and it was my position and another
21 fellow I worked with to run these leads down.

22 Q Prior to your testimony here today you reviewed,
23 have you not, the testimony you gave in the Tramunti case,
24 is that right?

25 A Yes, sir, I have.

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2 THE COURT: Has there been a decision in the
3 Tramunti case in the Court of Appeals?

4 MR. FISHER: No, we argue that tomorrow.

5 THE COURT: Very well.

6 Q In addition to the testimony that you gave in
7 the Tramunti case, have you had occasion to read the
8 arrest report filed by Mr. Spurdis prior to your testimony
9 here today?

10 A In preparation for this hearing, sir, I don't
11 believe I looked at the arrest report.

12 Q Is there a Form 101 filled out in connection
13 with an arrest or seizure?

14 A Form 101?

15 Q Yes, an arrest and seizure report.

16 A I am familiar with some other forms. Right
17 off the top of my head it might be. I don't recall that
18 there might be a 101.

19 Q As group supervisor that evening were you in
20 charge of the operations at 1908 Bronxdale Avenue?

21 A Yes, sir.

22 Q A decision was made ultimately in connection
23 with discussions of the United States Attorney to seek
24 a search warrant, isn't that right?

25 A I'm not sure I follow you, sir.

Q On February 3, 1972, you and Detective Spurdis went to the home of Judge Gurfein in New York City and obtained a search warrant?

A That is correct.

THE COURT: After the arrest?

MR. FISHER: Yes, sir.

Q Prior to going to Judge Gurfein you had a discussion with Mr. Tierney and Mr. Spurdis and Mr. Reed and with Mr. Reilly, isn't that right?

MR. BELLER: Same objection as before. I don't see how this is relevant to probable cause.

THE COURT: The only way I can take it is on the issue of credibility and if so I urge you to go right to the point as I said this morning.

MR. FISHER: I am trying to. The only difficulty is we don't have the affidavit, that is why we have to--

MR. BELLER: But going through the record it is a Spurdis affidavit and Spurdis is available to the defense.

THE COURT: Did he have anything to do with the affidavit?

MR. BELLER: Spurdis signed the affidavit.

THE COURT: Can this witness have anything to do with the affidavit?

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MR. FISHER: That is what I am inquiring into.

THE COURT: Ask him.

THE WITNESS: I didn't prepare the affidavit and I didn't swear to the affidavit, sir.

Q Did you approve of its contents, didn't you, as a group supervisor?

A An affidavit for a search warrant? No, sir, I could not approve of that. That is the Assistant's position.

THE COURT: Did you read this affidavit over when you went to Judge Gurfein's home?

THE WITNESS: I would have to say I would have looked at it.

Q If there was anything in the report you didn't believe was true you would have recollected?

A Yes.

Q Everything in that affidavit as written you believed was true, isn't that right?

A Yes, sir, I would say so.

Q Certainly you wouldn't go to Judge Gurfein with an affidavit that --

THE COURT: Don't belabor it. He said he would.

Q With regard to the contents of that affidavit, Mr. Pallatroni, didn't it allege in substance that the

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2 suitcase that came out wasn't the one that went into
3 1908 Bronxdale Avenue?

4 A That is a possibility. I really don't recall.

5 Q What possible basis did you have to seek an
6 affidavit to search 1908 Bronxdale Avenue except upon
7 the allegation that a suitcase other than the one that
8 came out had gone in?

9 MR. BELLER: I object.

10 THE COURT: Sustained.

11 Q Are you familiar with the complaint that was
12 filed in this case?

13 A I don't recall if I ever saw the complaint, sir.

14 Q I am showing you what has been marked as
15 Defendant's Exhibit K for identification. Does that refresh
16 your recollection, sir, as to whether or not you have seen
17 the complaint filed in connection with the arrest and
18 seizure on February 3, 1972?

19 A I knew there was a complaint filed. I don't
20 believe if I ever saw it.

21 MR. BELLER: I didn't hear you.

22 A I don't believe I ever saw the complaint before
23 but I knew one was filed.
24
25

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MR. BELLER: I'm sorry, I can't see the witness--

THE COURT: Well, if you want to shift your chair around, it would be perfectly agreeable.

MR. BELLER: It is because the reporter sits there --

THE COURT: I often tell people, Mr. Beller, that the court reporter is the most important man in the courtroom.

MR. BELLER: I agree. Perhaps I ought to sit in the jury box.

THE COURT: No, just shift your chair over to the left and you will be able to see him.

BY MR. FISHER:

Q You don't recall whether or not you reviewed the complaint prior to its being filed in the courthouse?

A The complaint would have drawn up -- I am sure I didn't review the complaint, because the complaint would have been drawn up in the courthouse on the morning that Mr. DiNapoli and Mr. Papa were brought before the Magistrate, and I do recall at that time I was at another location, and therefore I would not have had the opportunity to review the complaint.

Q What was it that was alleged in the affidavit in support of a search warrant to search 1908 Bronxdale

Avenue?

MR. BELLER: I object.

THE COURT: As I understand it, that affidavit is missing.

MR. FISHER: Yes.

THE COURT: And for that reason I will permit him to answer to the best of his recollection.

A I don't like to be evasive, sir; it is very difficult for me to recall what was on the affidavit. I would tend to give you an educated guess --

THE COURT: No guessing. Just give us your best recollection.

A My best recollection is that the events that occurred that night, and in sum and substance several items we uncovered in the Facciono investigation. That is what I would assume, and our knowledge of Mr. Papa.

Q That is all you can remember now, is that right?

A Well, at the present time. I think that is fairly accurate, and I feel that is quite a bit; I would just be reiterating most of my testimony that I've already given on direct.

Q You were referred to certain statements attributed to Stanton Garland on your direct testimony, is that correct?

2 A Yes.

3 Q With regard to Rocco Evangelista and Daniel
4 Renair?

5 A Yes, that is right.

6 Q When did Mr. Garland make these statements?

7 A He made these statements some time after
8 December 18, 1971, and prior to February 3, 1972; I would
9 say we had his information verified around January --

10 Q Excuse me, I just asked you for a date.

11 THE COURT: He is giving you his best recollection
12 of a date.

13 Q Between December 18 and January 11, 1972 --

14 MR. BELLER: I think he ought to be allowed to
15 finish his answer.

16 THE COURT: Yes, I think he should be, but I
17 think the witness answered his question. He has given you
18 his best recollection of the period in time.

19 Q Now, with regard to the activities that
20 Mr. Garland was discussing with regard to Evangelista and
21 Renair, what date did he ascribe to these activities of those
22 persons? In other words, when did he say they were doing
23 what they were doing?

24 A Well, it was his contention they were doing it
25 right along, right up to the present at that time.

Q Now, shortly after 9:30 on the evening of February 3, 1973 you decided to have that car stopped and the occupants of that 1968 Pontiac arrested, is that right?

A Yes, sir, that is.

Q That was your decision?

A Yes, sir, it was.

Q All alone?

A Yes, sir, it was.

Q And at that time, sir, isn't it a fact that this John Doe Number 3 wasn't really too much of a factor in your thinking?

THE COURT: The form of that question is difficult.

Q Is it a fact, sir, that John Doe Number 3 was not a factor in your thinking?

A That is a very difficult question to answer. You are asking me exactly what was in my mind --

THE COURT: He is asking you whether you were relying in any way on it in reaching a decision to effectuate this arrest.

THE WITNESS: I would have to say everything I have told you was one of the factors that led to my decision. How much I thought about that, how much it ran through my mind, I can't tell you; I don't recall.

2 Q There was a warrant out for John Doe Number 3
3 at that time, wasn't there?

4 A Not to my knowledge, sir.

5 Q Not to your knowledge?

6 A Not to my knowledge, no, sir.

7 THE COURT: Under the name of John Doe Number 3?

8 MR. FISHER: A John Doe warrant, yes, sir, your
9 Honor.

10 THE WITNESS: Not to my knowledge, sir.

11 Q The fact is, sir, that in the Tramunti case,
12 page 153, lines 19 through 23 --

13 MR. BELLER: What page is that?

14 MR. FISHER: Page 153.

15 MR. BELLER: Could Mr. Fisher read the question
16 and ask if it refreshes his recollection?

17 THE COURT: Yes, I've already made that
18 direction, Mr. Fisher. You can ask him whether he recalls
19 being asked this question and giving this answer at another
20 trial or whatever hearing it was.

21 MR. FISHER: That is what I was going to ask him.

22 THE COURT: Ask it in that form.

23 Q Did you give the following answers to the
24 following questions:

25 "Q Another factor was the conversation which

1 you had with Spurdis in relation to a John Doe Number 3.
2 Did that enter into it? If it didn't, just tell me it
3 didn't enter into my mind at the time.
4

5 "A I am thinking about my answer, sir; I
6 don't want to rush myself; I want to give you an honest
7 answer.

8 "Q Sure, take all the time you want to.

9 "A I really -- at that point I really
10 couldn't say that I was thinking too much about John Doe
11 Number 3."

12 Did you give those answers to those questions?

13 A If it is on the paper, that is what I did.

14 MR. FISHER: Would that be stipulated to by the
15 government?

16 MR. 'ELLER: Certainly.

17 Q Would that refresh your recollection as to the
18 extent to which you credited or were concerned about
19 John Doe Number 3?

20 A Well, as I tried to explain to you before, sir,
21 in my opening statement, it is very difficult to go back and
22 tell you how much John Doe Number 3 crossed my mind.

23 It is logical to assume that perhaps I didn't
24 take him into consideration too much, but we were up in that
25 area at first to try and identify that man; that was the

purpose originally of going there; so I have to say that some time during the course of that evening I was thinking about John Doe Number 3.

THE COURT: Who was John Doe Number 3?

MR. FISHER: We still don't know, your Honor.

THE WITNESS: He has never been identified, your Honor.

THE COURT: He has never been identified?

THE WITNESS: No, sir.

THE COURT: What precisely did he do that evening?

MR. FISHER: He never showed up.

THE WITNESS: We don't know, your Honor.

THE COURT: You never saw him?

THE WITNESS: No, I have never seen the man at all.

THE COURT: Your people who were working under your direction didn't see him?

THE WITNESS: Only one person saw him, your Honor.

THE COURT: That night?

THE WITNESS: No, not that night, that was much earlier in the investigation back in September 1971.

(Continued on next page.)

2 BY MR. FISHER:

3 Q Now, with regard to Stanton Garland you had
4 reviewed, had you not, the informant file that is kept with
5 regard to cooperating individuals?

6 A I am sure I reviewed it.

7 Q And you reviewed it prior to February 3, 1972,
8 is that right?

9 A Yes, sir, I did.

10 Q And in the course of the review of that file
11 did you find anything contained therein which would suggest
12 that Mr. Garland might be unreliable?

13 A No, sir, I did not.

14 Q Nothing at all?

15 A Not that I recall, no, sir.

16 MR. FISHER: At this time, if your Honor please,
17 I would ask the government to supply the Court with the
18 informant file of Stanton Garland for an in camera inspection
19 to determine whether or not anything exists with relation
20 to this question.

21 THE COURT: The difficulty there, you see, is
22 that would not be the scope and purpose of my examination.
23 The scope and purpose of my examination would be to consider
24 whether there is any reason why it should not be produced.

25 MR. FISHER: I would be happier with that, your

Honor.

THE COURT: What is your claim?

MR. BELLER: We really don't believe that any information in any file goes to probable cause. The witness has testified about his recollection of what was in the files, what was in his mind as of February 3, 1972.

THE COURT: But, you see, it is your contention, as I understand it, he was relying, in part, in making his decision to effectuate the arrest without a warrant and in reaching the conclusion that he had probable cause to make an arrest, he was relying, at least in part, on conversations with Garland; is that so?

MR. BELLER: That is correct, any information he had about the conversations that Garland had with other agents.

THE COURT: Also, I suppose it is your contention -- and if not, I think you should say so -- that in relying to the extent that he is relying on Garland's conversation with members of his staff, that he considered Garland to be a reliable informant.

MR. BELLER: He took independent steps to establish the reliability of Garland's information, correct.

THE COURT: So then it does become relevant whether any information derogatory, or any information contra-

indicative of the reliability of the informant was, in fact, available to him and known to him at that time.

MR. BELLER: I think he has already testified that there was no such information made known to him.

I will only say, your Honor, that with respect to the discovery of informants' files, confidential government folders and so on, the question, it seems to me, would come up in every single case. Somebody testifies about a matter --

THE COURT: Well, he can't go around ransacking the file, but the question is whether the file contains a document which was issued for the purpose of alerting agents who were dealing with that particular informant of something having an adverse bearing on his credibility.

Isn't that what we are talking about here?

MR. BELLER: Frankly, I haven't examined the file and I don't know anything about it.

THE COURT: I think you ought to examine it. Of course, there is the possibility it might even contain Brady material, and then you would be in a difficult position.

MR. BELLER: Your Honor, the witness has been asked a question and he has testified that he saw no such document. The fact that it might be in a folder someplace in some headquarters folder after the arrest or before the

arrest does not seem to me to meet the defendant's --

THE COURT: I think you ought to look at the file and see whether we are talking about something or nothing. I think you ought to look at the file yourself and be in a position to ascertain for your own purposes whether the document which has been mentioned is in there, and, if so, what date it bears, and if it is not, then you can make a representation to that effect.

You also, I think, have to look at it for Brady material. I don't see how you can avoid looking at it.

MR. BELLER: Well, shall we --

THE COURT: Not necessarily today but before the trial you should look at it.

MR. BELLER: Yes, we have a continuing obligation under Brady, but this witness has said he has no recollection of any such document, if it exists at all.

THE COURT: But you see, Mr. Fisher does not necessarily bind himself to accept that recollection of the witness, and he may be able to confront the witness with the fact that such a document exists, and since the witness admits he looked at the file, the Court might be asked to infer that if he looked at it he must have seen it.

MR. BELLER: I understand.

THE COURT: Let's not belabor a hypothetical

situation. The first opportunity you have, you look at the file.

MR. BELLER: Fine.

BY MR. FISHER:

Q With regard to Mr. Garland, Mr. Pallatroni, hadn't you in fact heard prior to February 3, 1972 that Mr. Garland had been arrested in possession of a weapon, unlawful possession of a weapon?

THE COURT: If every informant that was arrested for unlawful possession of a weapon were considered unreliable, we would not have much, would we?

I will let him answer.

A I think I know what you are driving at --

THE COURT: No, just answer his question. Don't worry what he is driving at.

A I don't recall if he had prior to that been arrested with a weapon.

Q You don't recall?

A That is right.

Q By the way, if a warrant for John Doe Number 3 had been issued, you, as group supervisor in connection with that investigation would have known about it, isn't that right?

A I should have known about it.

2 Q Of course, you learned subsequently that Stanton
3 Garland became a fugitive with regard to his cooperation
4 in the Eastern District, is that right?

5 MR. BELLER: No objection to the answer, but I
6 do object to the form of the question.

7 THE COURT: Yes, the form of the question is
8 bad, and the objection is sustained.

9 It is subsequent anyway, so what good does it do?

10 MR. FISHER: Just so the record is complete
11 with regard to the Garland issue, your Honor.

12 MR. BELLER: Well, subsequent --

13 THE COURT: If you want to make an offer of
14 proof, you may, but let's not cross-examine this witness
15 about irrelevant material.

16 MR. FISHER: I will withdraw the question.

17 BY MR. FISHER:

18 Q Were you ever asked to execute an affidavit with
19 regard to the activities of February 3, 1972 for
20 Mr. Borden?

21 A To execute an affidavit?

22 Q Yes.

23 A Yes, sir, I was.

24 Q Do you know where that affidavit is now?

25 A Where the original is?

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Q Yes.

A I could only presume where it is.

Q Whom did Mr. Borden work for?

A The Office of Inspection.

MR. BELLER: Could we get a time for this?

Q When did you execute this affidavit?

A The exact date, I will take an educated -- well,
at the end of October 1973.

Q But this was with regard to the activities that
you discussed with us on direct testimony of February 3, 1972,
isn't that right?

A That depends how you look at it.

Q In this affidavit that you executed for
Mr. Borden you described, did you not, some or all of your
activities on February 3, 1972?

A Yes, sir, I did.

MR. FISHER: May that be produced, your Honor?

MR. BELLER: Well, we object, your Honor.

If there's any meaning to the rule that 3500
material does not have to be or should not be turned over
or need not be turned over --

MR. FISHER: If your Honor pleases, with regard
to this issue a similar affidavit has been executed by
Mr. Reed, another special agent of the Drug Enforcement

2 Administration. At the previous hearing that affidavit was
3 redacted to some extent, but to the extent that it was
4 relevant to February 3, 1972 Judge Duffy let it in and it
5 became an exhibit.

6 MR. BELLER: That is absolutely untrue. I have
7 already discussed it with Mr. Fisher. It was marked for
8 identification. It was not Judge Duffy --

9 MR. FISHER: It was marked --

10 THE COURT: One at a time, please.

11 MR. BELLER: It was not Judge Duffy; it was
12 Mr. Phillips who hadned over that exhibit. It was in an
13 exhibit.

14 MR. FISHER: It was marked for identification
15 and given to defense counsel for use or purposes such as
16 I would put it to here, your Honor.

17 THE COURT: You see, long before we were
18 afflicted with Section 3500, if a witness had made a previous
19 statement concerning matter he testifies to, that was
20 ordinarily a proper subject for cross-examination.

21 Now, if you already have the Reed affidavit, how
22 many do you need?

23 MR. FISHER: I don't have the Reed affidavit.
24 I have asked the government for it. They have not given it
25 to me.

1 THE COURT: They gave it to these other defendants
2 in this other case but they won't give it here?
3

4 MR. FISHER: That is right. I don't know why.

5 MR. BELLER: I don't know what the position was
6 at that time. The Reed affidavit was made available --
7 that was one page -- at that time.

8 It is the government's position --

9 THE COURT: Well, you see, you tried a case in
10 this court concerning the same money, did you not?

11 MR. BELLER: That is correct.

12 THE COURT: Then I fail to see how you can, in
13 fairness, proceed in one fashion in that case and hand out
14 the Reed affidavit for marking for identification, and then
15 in another case involving different defendants but the same
16 money, as I understand it, resist showing it. It seems to
17 me that shows an inequality of treatment which may be
18 invidious here.

19 If there is a redacted affidavit of Reed that
20 was allowed to be shown Tramunti's counsel, I don't see --
21 well, let me get the dramatis personae correct here.

22 What is your standing, Mr. Fisher, in the
23 Tramunti case?

24 MR. FISHER: I represented a co-defendant.

25 THE COURT: Who?

MR. FISHER: Donato Christiano.

THE COURT: Are there any defendants in this case who were defendants in that case?

MR. FISHER: No, your Honor.

THE COURT: But it is the same money?

MR. FISHER: Ubiquitous comestible.

THE COURT: I think it would be appropriate if the Reed redacted affidavit were made available at a hearing or trial of Tramunti, it ought to be made available here. I don't see how you can justify treating these defendants differently.

MR. BELLER: It is the same lawyers and the same issue. I don't think the defense is going to be happy calling this hearing the same as the Tramunti hearing.

THE COURT: Well, it is the same money, and I think in the interests of justice and expediting the matter, that you ought to go ahead and do that.

MR. BELLER: All right, I will be happy to do that.

THE COURT: If he has the Reed affidavit the other affidavit becomes unimportant.

MR. BELLER: I will make that available. I believe the Reed affidavit is not relevant with respect to this witness. This witness did give an affidavit --

1 THE COURT: I think I will excuse the witness
2 while we discuss this.
3

4 I think I ought to take an offer of proof as to
5 what you would show, because we are taking a lot of time,
6 Mr. Fisher. I really thought I could conclude this matter
7 today.

8 (Witness temporarily excused.)

9 THE COURT: I would like to know exactly what
10 you are driving at, and make me an offer of proof in the
11 absence of the witness, and if it is reasonable and proper
12 you will be permitted to develop it.

13 MR. FISHER: If your Honor please, all I know
14 is that it is a prior sworn statement with regard to the
15 precise and the same issues he has testified to here.

16 Your Honor asked me to make an offer of proof
17 about a document the government has prevented me from
18 looking at.

19 THE COURT: But you have a line of inquiry for
20 a purpose. You are not just fishing around, I take it, to
21 waste my time?

22 MR. FISHER: Absolutely not, your Honor.

23 THE COURT: What do you propose to show through
24 this document? How would it help this case?

25 MR. FISHER: If it is consistent with his

1 testimony there will be no questions about it and we will
2 proceed right along.

3
4 If, in fact, there is a prior sworn statement
5 that is inconsistent, that bears mightily on the issues
6 before your Honor, and your Honor should be made aware of it.

7 MR. BELLER: Just for the record we will be
8 happy to turn it over, since it occurs to me that the
9 Pallatroni affidavit was turned over in connection with the
10 Tramunti trial with respect to Pallatroni's testimony, so
11 the affidavit has been available to counsel since the
12 Tramunti trial at the very least, and so that the record
13 does not reflect any surprise --

14 THE COURT: All right, I think you can turn it
15 over, and if there is any necessary redaction, you can make
16 it.

17 MR. BELLER: But we do object to broadening the
18 hearing for the purposes -- this is a statement taken a
19 year and a half subsequent to the events and based on
20 charges and allegations --

21 THE COURT: Well, nobody would like to narrow
22 the scope of the hearing more than I, but justice demands
23 that I make an intelligent finding of fact here, and without
24 permitting some reasonable cross-examination I would be most
25 reluctant to do that. Now I have to make a finding of

whether there was probable cause or not for this arrest or search and seizure of the contents of the automobile that was made, isn't that right?

MR. BELLER: I understand that.

It is the government's position there are other purposes for which it might conceivably be used but which are not relevant to the hearing.

THE COURT: They are not going to be used in this hearing. It would be 3500 material on the trial if this man testified.

MR. BELLER: I say, it was handed over in connection with Pallatroni's testimony in Tramunti, so they already have it.

MR. FISHER: Would this be an appropriate time for a brief recess, your Honor? It is a five-page, closely typed document.

THE COURT: All right. The Court will take a ten-minute recess.

MR. FISHER: Thank you.

(Recess.)

2 (Witness resumes stand.)

3 BY MR. FISHER:

4 Q Mr. Pallatroni, with regard to the area of
5 1908 Bronxdale Avenue, have you had occasion to be there
6 within the last year or so at night?

7 A At night, sir?

8 Q Yes.

9 A I don't believe so at night, sir.

10 Q And would you agree, sir, that for a good part
11 of the evening it was pouring rain on February 3, 1972?

12 A During the evening of February 3 at times it
13 was pouring; at times it was a light drizzle; at times it
14 stopped raining, but there was a great deal of precipitation
15 during the night.

16 Q With regard to the time of 9:30 at night, was
17 it pouring?

18 A When we effected the arrest, as far as I can
19 remember, it was not raining. There might have been a light
20 drizzle; it was not pouring.

21 I do recall when we were coming down on the
22 West Side Highway with Mr. Papa in my vehicle it was coming
23 down very hard.

24 Q And prior to the arrest, sir, at the time you
25 received a radio call from Mr. Reilly, wasn't it, in fact,
pouring?

1 A I can't really say exactly whether it was
2 pouring. When I arrived there I don't believe it was
3 raining, because I recall having a conversation with
4 Detective Spurdis on the sidewalk. I don't think I would
5 have stood out in the pouring rain.
6

7 Q Are you sure about that, by the way, that you
8 spoke with Spurdis on the sidewalk?

9 A It is my recollection that that is where my
10 conversation took place.

11 Q And you were out of your car at that time?

12 A Yes.

13 Q You are sure of that?

14 A As I say, it is my recollection.

15 Q Now, there came a time at about 9:00 o'clock
16 when you were advised that someone had left 1908 Bronxdale
17 Avenue, is that right?

18 A Not quite, sir. It was approximately 9:00
19 o'clock I observed someone come out of 1908 Bronxdale
20 Avenue.

21 Q Weren't you advised over the radio that someone
22 had left 1908 Bronxdale Avenue?

23 A If I recall correctly, there was radio communi-
24 cation about that also --

25 Q Excuse me?

1 A There was radio communication about that also.

2 Q And you were told, were you not, that the car
3 had made a U-turn and had a license plate 176 MR, is that
4 right?
5

6 A No, sir, that is not what I recall.

7 Q Your recollection is that you were not told
8 that, is that right?

9 A I recall that the car made a U-turn but at that
10 time we didn't have the license plate.

11 Q I just would like to know this, Mr. Pallatroni:
12 Your testimony is that you were not told on the radio that
13 the license plate number of that car was 176 MR?

14 MR. BELLER: Your Honor, I object to this
15 questioning. He has asked him twice. He said to the best
16 of his recollection --

17 THE COURT: You see, he asked him a compound
18 question. He threw in the U-turn and the license in one
19 question. There should have been two such questions and
20 separately asked.

21 I will let him answer it.

22 A I don't recall anybody telling me the license
23 plate over the air. I recall going after the car and
24 obtaining the license plate myself.

25 Q Wasn't it the purpose of your following the car

2 I think it was in the vicinity of 9:00 o'clock I observed
3 them. One white male exited 1908 Bronxdale Avenue and
4 entered a car that I couldn't see. It was parked on the
5 opposite side of the street; it executed a U-turn, and I
6 followed the car in order to obtain the license plate."

7 Do you recall giving that testimony, sir?

8 A Yes, sir, I did.

9 Q Is that true?

10 A That is where I stopped my answer. That was
11 one of the reasons I went to get the license plate.

12 Q You didn't say it was one of the reasons.

13 A Obviously it is one of the reasons.

14 Q So how long in time did you follow this car,
15 Mr. Pallatroni?

16 A I would say maybe five minutes.

17 Q And then you concluded, did you not, that this
18 car was driving in a circuitous and evasive manner?

19 A I determined that the car took me in a circular
20 pattern; it took me in a complete circle, and as far as I
21 was concerned, I immediately went back to 1908 Bronxdale
22 Avenue.

23 Q And you reported, in substance, that this car
24 in leading you away from the action -- isn't that right?

25 A I believe I said that, to the best of my recol-

lection; I believe I said that, yes, that the car took me in a circle and it was my opinion that he was trying to get me away from the scene.

Q Your experience as a narcotics investigator was that this was a device sometimes used; isn't that right?

A Yes, sir.

Q To draw away surveillance from the scene of a narcotics transaction, is that right?

A That is correct, sir.

Q So the idea was that the car would have you follow them away from the narcotics transaction, is that right?

A It would take me away from where the action was, yes, sir.

(Continued on page 203.)

1 arbr

Pallatroni-cross

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Q Well, it was consistent, Mr. Pallatroni, with

3

that theory of yours that the car was driving in a circuitous

4

and evasive manner?

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A I don't believe I ever used the term evasive

6

sir. I don't believe those were my words.

7

I believe my words were the car took me in

8

a complete circle, perhaps a circuitous manner. But

9

I don't believe I ever used the term evasive.

10

Q The idea being according to your analysis,

11

Mr. Pallatroni, that this car wanted you to follow them,

12

isn't that right?

13

A That time I felt a car was there to take any

14

police officer away from that house.

15

Q Which means the next thing, the very next

16

thing was that someone was going to leave 1098 Bronxdale

17

Avenue?

18

A I wouldn't say the very next thing, sir.

19

Q The idea is that you are drawn away by this

20

car, something soon is going to happen in 1098 Bronxdale

21

Avenue?

22

A That was my impression, something was going

23

to happen. How much later, I couldn't tell you.

24

Q Mr. Pallatroni, the fact is, is it not, that

25

not until 30 minutes later did two gentlemen leave the house

with the suitcase, isn't that right?

A No, sir, I don't think that is correct.

I said that he exited the house at 9 p.m. I followed him for approximately five minutes. About approximately 25 minutes later, after two additional individuals left Mr. Papa and an individual identified as Mr. DiNapoli came out.

Q Mr. Pallatroni, you say you are an experienced narcotics investigator?

A Yes, sir.

Q You are telling us that it was your conclusion and belief that this car driven by Murray Richmond had intended to lead you away from this scene of a transaction, isn't that right?

A My testimony is this, sir: That the car -- I didn't know who was driving it at the time, to this day I don't know who drove that car, I couldn't identify that driver -- it took me away from the area, took me in a circular fashion and I felt he was going to lead me away because a transaction was going to occur.

Q Was going to occur while you were away, right?

A No, sir, I didn't say while I was away. It was going to occur very soon. How soon I have no way of telling but I would assume within the near future.

1 arbr
2 Q Pretty quickly, right?

3 A I would say within a reasonable amount of time.

4 Q The very first thing you would do having come
5 to this conclusion, being some five or six minutes away
6 from Bronxdale Avenue was to phone the base to get assistance
7 isn't that right? Did you do that?

8 A I didn't need any assistance.

9 Q You didn't call?

10 A No, I did not call. I had a unit at the
11 scene.

12 Q One unit?

13 A Yes, sir.

14 Q Did you tell them to expect it coming down
15 soon?

16 A That is quite possible, sir.

17 Q Did it happen?

18 A I believe I called them and told them what
19 happened and I expected perhaps something to happen and
20 I went back to 1908.

21 Q Did you tell Mr. Reilly or Mr. Spurdis on the
22 car radio to expect something?

23 MR. BELLER: He testified three times he may
24 have or he did.

25 THE COURT: It is repetitious.

1 arbr
2 Q So, Mr. Pallatroni, having concluded then
3 that you had been deliberately led away from the scene
4 of a narcotics transaction, you drove back to 1908
5 Bronxdale Avenue?

6 A That is correct.

7 Q You resumed your former place of surveillance,
8 is that right?

9 A That is correct.

10 Q On Rhineland Avenue?

11 A My former position, I believe it is Rhineland
12 Avenue.

13 Q Where on Rhineland Avenue were you?

14 A I was in a position where I could see the
15 front door of 1908 Bronxdale Avenue.

16 Q Could you estimate in feet the distance between
17 your car and the front door of 1908 Bronxdale Avenue?

18 A I am not very good at estimating distance.
19 I would say maybe 300 feet, maybe.

20 Q So two people come out, is that right?

21 A Some time later, yes, sir.

22 Q Shortly after you return, right?

23 A Three women entered the building first.

24 Q And two men came out?

25 A Yes.

1
2 Q They got in separate cars?

3 A That is correct.

4 Q You proceeded to follow one or both of them,
5 is that right?

6 A By the time I got to the corner I could see
7 they were too far gone and I didn't follow.

8 Q Then you went right back to your former
9 position of surveillance to watch the front door?

10 A No.

11 Q You went to the Carvel place?

12 A The vicinity of Carvel.

13 Q Seven blocks away?

14 A Seven blocks away? No, sir, I didn't go to
15 Carvel seven blocks away.

16 I stated before I was in the vicinity of
17 Carvel. Carvel is, as far as I know, perhaps two blocks
18 away if I was there. Now, that is it. That is where
19 I went.

20 Q You went to the Carvel place?

21 A To the vicinity of Carvel. I don't believe
22 that I sat in the Carvel parking lot.

23 Q At the Carvel place there was no way in the
24 world for you to see the front door of 1908 Bronxdale
25 Avenue?

1
2 A No, there was not.

3 Q You went to this Carvel place at a time when
4 you are expecting an impending transaction because you had
5 just been led away, isn't that right?

6 A I moved my position, I was still in the vicinity
7 of the house. I had another unit there and that is the
8 position I took after I saw the cars were too far gone
9 for me to get to.

10 Q But you couldn't see the front door?

11 A No, sir.

12 Q You left your position at the front door at
13 the precise point in the evening you say you were expecting
14 something to happen?

15 A That is correct.

16 Q Your testimony is, Mr. Pallatroni, that you
17 were never advised that Murray Richmond owned a car
18 bearing license No. 176-MR on the night of February 3,
19 is that right?

20 A No, sir, I don't believe that was my testimony.

21 Q Is that your testimony?

22 A No, sir, it is not my testimony.

23 Q Were you advised the night of February 3,
24 1972, that that license plate was registered to Murray
25 Richmond?

2 A I was advised as I testified before some time
3 in the late evening of February 3rd or the early morning
4 hours of February 4th that that vehicle was in fact
5 registered to Murray Richmond.

6 Q In any event, you are sure you didn't get
7 this prior to the time you decided to have these men
8 arrested?

9 A No.

10 Q No question about it?

11 A No question.

12 Q You phoned your base station and asked them
13 to check with Albany for this information?

14 A I used the radio.

15 Q On your radio you called them?-

16 A That is right.

17 Q Just as you had done with respect to the
18 information with regard to the Papa automobile?

19 A I called the plate registered to Mr. Richmond
20 into our base station.

21 Q And you didn't get back a response until much,
22 much later?

23 A That is correct.

24 Q Your testimony before was that the cause of
25 it was that the computer in Albany had broken, isn't that

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Pallatroni-cross

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right?

A That was my testimony, that is correct.

Q Did agents in February 3, 1972 in your group have call numbers?

A Yes, sir, they did.

Q What was yours?

A 201.

Q What was Spurdis'?

A I believe to the best of my recollection 207.

Q What was Reilly's, Mr. Pallatroni?

A To the best of my recollection, 208.

Q What was Reid's answer?

A I believe it was 211, but I am not sure.

I am really not sure what Agent Reid's call number was.

Q Are you familiar with the code 10-8?

A Yes.

Q What is it?

A You are on the air, you are in service.

MR. FISHER: In view of this testimony I have to make another application. Exhibit 2 indicates that as to call No. --

MRS. ROSNER: I ask that the witness be excused before this offer is made.

THE COURT: All right.

1 arbr

Pallatroni-cross

211

2 (Witness leaves the courtroom.)

3 MR.FISHER: Exhibit 2 indicates that at
4 7:04 code No. 208 had a 1011 and we are not given that
5 entry.

6 THE COURT: 1011 is a request for a license
7 plate.

8 MR.FISHER: Yes.

9 THE COURT: Who had this?

10 MR. FISHER: Group No. 208. That is Mr.
11 Reilly, I believe. At 7:22, 201, 203 and 209 were marked
12 as 10-8, I guess on the air. Whatever entry appears
13 we would like to have.

14 At 8:55 there is 209, a 1011 and at 9:30,
15 209, 1011. I think we are entitled to that entry.

16 MR. BELLER: I have given everything that
17 I understand is related to this investigation and there
18 is no entry under the remarks section for 7:22 for the
19 entry 203, 209 and in fact 10-8 never have remarks.

20 MR. FISHER: How about 7:04.

21 MR. BELLER: 7:04 is not related to this
22 case as far as I know.

23 THE COURT: Phoned in by whom, Mr. Beller?

24 MR. BELLER: It is a 208, which I guess is
25 Reilly.

MR. FISHER: We have a representation that we had all the injuries made by any of the people on this night.

THE COURT: Nobody asked about 208's. The request we discussed had to do with motor vehicle identification checks. 208 as I understand it merely means the man is on duty.

MR. BELLER: I have no objection to giving this over if it is related to this case.

May I take a moment and ask?

THE COURT: Let us complete the inquiry before you take that moment to ask.

MR. FISHER: The No. 208 is given to the police officer.

THE COURT: That is Mr. Reilly. That is an entry for Mr. Reilly at what hour?

MR. FISHER: 7:30, a 1011.

THE COURT: What else is it that you want?

MR. FISHER: 8:55 from 209, another 1011.

MR. BELLER: That is a different agent's number than one of these four agents.

MR. FISHER: That is possible.

With regards to the 9:12 entry, the 1011, we don't have the call number on that.

1 MR.BELLER: Because the book has no call number.

2
3 MR. FISHER: In any event, I thought the
4 understandstanding was that we were beingprovided with every
5 entry of every reference in the log to any one of these
6 four people made between 7 and 12 on February 3, 1972.

7 THE COURT: You are missing the 9:12 and the
8 7:04.

9 MR. BELLER: The 9:12 there is no entry in the
10 book. I can't duplicate an entry that isn't there.

11 THE COURT: Mr. Beller indicates he will make
12 an inquiry about the 7:04 entry.

13 MR.BELLER: Shall I do so now?

14 THE COURT: You might as well do it now.
15 Who are you going to ask?

16 MR. BELLER: The agents are here. They can
17 tell me whether it relates to the Facciono investigation
18 or something else. We are only concerned with protecting
19 other investigations.

20 THE COURT: I am quite aware of that, there
21 is no difficulty.

22 MR.FISHER: May I ask a few more questions be-
23 fore the witness is questioned about this?

24 THE COURT: I am certain Mr. Beller is going to
25 just go out and ask questions about what was asked.

1 arbr

Pallatroni-cross

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2 MRS. ROSNER: I want to object to this procedure.

3 THE COURT: Objection overruled. Please sit
4 down or I shall send for the marshal.

5 We are here in the interests of justice to
6 cross examine this witness and it is being conducted by
7 Mr. Fisher representing a different defendant and I don't
8 want to be interrupted by this type of matter.

9 When I rule against something I don't want to
10 hear another word from any other lawyer. Sit down.

11 MRS. ROSNER: May I just state --

12 THE COURT: No.

13 MRS. ROSNER: Respectfull except, your
14 Honor.

15 THE COURT: Exception noted.

16 Go ask him.

17 (Pause.)

18 MR. BELLER: I am informed that this entry
19 relates to a different investigation.

20 THE COURT: All right. You make your repre-
21 sentation to that effect.

22 MR. FISHER: If your Honor please, since --

23 MR. BELLER: We have no objection to making
24 this entry available just in the interest of expediting this
25 matter. Shall I read it?

2 THE COURT: If you like. If it doesn't relate
3 to this investigation I am not going to require you to
4 read it but if you want to read it, read it.

5 MR. BELLER: It reads "QH4534, 72, CAD.
6 SED. BLK. EXP, 12/72.

7 "John J. Kopf, 5926-160 Street, Flushing.
8 Date of birth, 10/30/27."

9 There are three letters crossed out.

10 THE COURT: The "CAD" referred to a Chevrolet?

11 MR. BELLER: Probably a Cadillac, your Honor.

12 THE COURT: Bring the witness back in, please.

13 (Witness resumes the stand.)

14 BY MR. FISHER:

15 Q I think we were at the point where you were
16 telling us that you attempted to get the registration in-
17 formation regarding 176-MR prior to the arrest of the
18 gentleman in the 1968 Pontiac but because the Albany computer
19 was broken down, you did not get that information until
20 early the next day, is that right?

21 A Until later that evening or early the next
22 day, A.M.

23 Q After the arrest?

24 A That is correct.

25 Q Certainly not at 9:22 in the evening?

1
2 A No, sir.

3 Q Are you sure of that?

4 A I am positive of that.

5 Q At or about 9:30 that evening you received a
6 radio message in your position in the vicinity of the
7 Carvel place, is that right?

8 A Yes, sir.

9 Q At that point in time this message came from
10 Mr. Reilly?

11 A That is correct.

12 Q Mr. Reilly told you that Vincent Papa was
13 carrying out a suitcase, isn't that right?

14 A Yes.

15 Q Are you sure it was Mr. Reilly?

16 A Yes, sir, I am.

17 Q You are sure it said Mr. Papa is carrying out
18 the suitcase?

19 A That is correct.

20 Q I believe you testified that the arrest, the
21 decision to arrest was solely yours?

22 A I instructed the car to be stopped, yes, sir.

23 Q You made it shortly after you were advised that
24 these two men had left 1008 Bronxdale Avenue, one of whom
25 was carrying a suitcase, and got into a car and surveillance

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Pallatroni-cross

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was effected, isn't that right?

MR. BELLER: I object to the form.

THE COURT: Sustained as to form.

Q Can you give me a time specifically like 9:30, 9:40, a timewhen you ordered Spurdis-Reilly to head off the car?

A A time shortly after 9:30.

Q This was at or about the point in the proceeding when this car reached the intersection of East Tremont and CastleHill in the Bronx?

A Making a turn on East Tremont and Castle Hill would have been the next cross street east.

Q At this point you clearly and unalterably made up your mind to have them arrested?

A That is correct.

THE COURT: I don't really know what you mean by unalterably. He made up his mind to have them arrested. If some other fact had occurred I don't know if that would be unalterable or not. But you had reached a decision?

THE WITNESS: Yes, your Honor.

Q At the time of arrest you are saying now it wasn't raining, is that right?

A It wasn't raining at the time of arrest.

Q You are not sure of that?

1 arbr

Pallatroni-cross

218

2 A It might have been drizzling but that was
3 about it. It wasn't raining heavily.

4 Q Subsequently you and Mr. Reilly and Mr. Papa
5 and the suitcase proceeded to 201 Varick Street?

6 MR.BELLER: I object to events after the
7 arrest.

8 THE COURT: Solely on the subject of credibility

9 MR.FISHER: Thank you.

10 A That is correct.

11 Q Your testimony would be that this suitcase,
12 Government Exhibit 1 in evidence, was in the trunk of your
13 car?

14 A That is correct.

15 MR. BELLER: I object to the form of the
16 question.

17 THE COURT: The form is bad.

18 Q Where was Government Exhibit 1 on the way to
19 201 Varick Street?

20 A In the trunk of my vehicle.

21 Q You are absolutely certain of that fact, correct?

22 A Yes, sir, I am.

23 Q On the way to 201 Varick Street you stopped the
24 car?

25 A That is right.

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2 Q And how it was raining?

3 / A I believe it was.

4 Q You asked Mr. Reilly and Mr. Papa to get out
5 of the car, is that right?

6 A I asked Officer Reilly to take Mr. Papa out of
7 the car.

8 Q Leaving you alone in the car?

9 A That is correct.

10 Q That was for the purpose of making a communication
11 to headquarters, isn't that right?

12 MR.BELLER: Your Honor, I don't think I ought
13 to have to get up every time I object as to form. Mr.
14 Fisher can ask a proper question.

15 THE COURT: Yes, the form doesn't save any
16 time, Mr. Fisher.

17 MR .FISHER: I am sorry.

18 THE COURT: Frame a new question.

19 Ask him what the purpose of directing Mr.
20 Reilly to take Mr. Papa out of the car was.

21 A I will adopt that question.

22 MR.FISHER: Thank you, your Honor.

23 Q What was the purpose?

24 A I had a couple of units in my group at another
25 location in the Bronx and I wanted them to proceed to

1908 Bronxdale Avenue and conduct a surveillance of that building and gave them certain instructions.

Q Did you make any radio communication with headquarters?

A Yes, I believe I did.

Q These were designed to further the investigation that had commenced mightily with the seizure of all the cash?

MR.BELLER: I object to the mightily.

THE COURT: Yes, the form is bad.

MR. FISHER: I withdraw the mightily.

THE COURT: Besides I am not sure that is when the investigation commenced. It all assumes a state of facts.

Q In any event, Mr. Pallatroni, these communications that you were making were made in connection with further investigative efforts to be taken with regard to 1908 Bronxdale Avenue that night?

A Some of them were, yes, sir.

Q The difficulty was because you didn't want Mr. Papa to hear them?

A Yes.

Q Was Mr. Papa in custody?

A That is correct.

Q And handcuffed?

A That is correct.

Q All yours, isn't that right?

A Pardon me?

MR.FISHER: Withdrawn.

THE COURT: All his until the morning.

MR. FISHER: May the record reflect, if your Honor please, Government's Exhibit 2 does not carry any indication of any radio message from Mr. Pallatroni to headquarters on that night.

THE COURT: It is a collateral matter, Mr. Fisher.

MR.FISHER: If your Honor please, the government is claiming --

MR. BELLER: It is not in the log. You have whatever you asked for.

MR.FISHER: It is not in the log.

THE COURT: All right, he stated it is not in the log.

MR.FISHER: That is simply the point I tried to make, your Honor.

Q At one point in time, Mr. Pallatroni, you made certain conclusions on the basis of your belief that this 1968 Pontiac was a leased car?

A I made certain conclusions, yes, sir.

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2 Q They were significant conclusions leading to the
3 ultimate decision to arrest, isn't that right?

4 A They had some bearing on my decision, yes, sir.

5 Q Isn't it a fact that you attached quite a bit
6 of significance to your belief that the Papa car was
7 leased?

8 A I rather say I attached significance to it.

9 Q A great deal of influence on your decision
10 to arrest?

11 A It is very difficult to say how much influence
12 each factor had. But it did have a substantial amount
13 of influence.

14 Q It wasn't difficult for you to tell that to
15 Judge Duffy when you testified against Tramunti?

16 MR.BELLER: I object to the form of the question.

17 THE COURT: Yes, it is objectionable. We are
18 talking of words of judgment.

19 Q Did you not testify in the Tramunti case,
20 Page 13, line 3 but the leased car did have a great deal
21 of influence on my decision?

22 THE COURT: Ask him if he recalls being asked
23 that question and did he give that answer and give the page
24 and the line.

25 Q Line 9, page 139:

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2 "Q So to you actually it did matter how many
3 cars he owned, leased cars, is that correct?

4 "A Actually it didn't matter whether or not
5 he owned or didn't own them really. But the leased car
6 at the time had a great deal of influence on my decision."

7 Did you give that testimony?

8 A I believe I did.

9 Q Was that true, sir?

10 A Yes, it was.

11 Q Is it still true?

12 A As I said, it had a great bearing on my de-
13 cision at the time and all the factors added I think had
14 a great bearing on my decision.

15 Q The fact of the matter is that the 1968 green
16 Pontiac wasn't a leased car, isn't that right?

17 MR. BELLER: Objection, your Honor.

18 THE COURT: I don't know how he could know.
19 It didn't belong to the defendant, isn't that so? It be-
20 longed to some corporation?

21 MR. FISHER: That is correct.

22 THE COURT: How would he know whether it was
23 leased or borrowed or rented or stolen, for example?
24 How would he know?

25 MR. FISHER: I will get to that.

1 arbr
2 Q The fact is the car wasn't leased, isn't that
3 right?

4 A At the time on February 3, 1973 I was under the
5 impression that the vehicle was leased.

6 Q Did the license plate indicate that it was leased,
7 Mr. Pallatroni?

8 A The license plate, it had a dealer's plate.

9 Q In other words, this license plate --

10 MR. BELLER: The witness hasn't finished answer-
11 ing the question.

12 THE COURT: I am not sure whether he finished or
13 not.

14 A And when I received word via the base station --

15 MR. FISHER: I asked only with respect to the
16 license plate.

17 THE COURT: You asked whether the license plate
18 indicated this was a leased car.

19 MR. FISHER: He answered with respect to the
20 license plate. I just want to cover the license plate at
21 this time.

22 THE COURT: I will permit him to finish his
23 answer. If it is unresponsive I will strike it out.

24 A My belief at the time was that the car was
25 leased. With the dealer's plate, I didn't have an explan-

ation for that.

Q You still don't have an explanation for that, do you?

MR. BELLER: I object, your Honor.

THE COURT: Well, why don't you let him answer why would he know. You don't know of your own knowledge under what circumstances possession of this car was in the defendant that night?

THE WITNESS: Not of my own knowledge.

Q You knew when you looked at that plate that it wasn't a leased car, didn't you, Mr. Pallatroni? It said a dealer, didn't it?

A That it said dealer.

Q Exactly, not leased.

A I only knew what the base operator told me.

Q The base operator told you Wides Motor Sales, didn't he?

A No, he did not.

Q He told you something about a leasing company, is that right?

A World Wide Leasing Company. That is what I remember, sir, and that is what I will testify to.

Q You are positive of that?

A Yes, sir.

1 arbr
2 Q Were you listening to the same radio Mr.
3 Reilly was listening to, weren't you?

4 A I hope so.

5 Q He heard the same transmission you heard?

6 MR.BELLER: Objection.

7 A I can't answer for what Mr. Reilly heard.

8 Q But you are sure you heard Wide Leasing or
9 something?

10 A Wide World Leasing Corporation.

11 Q You are positive about the word Leasing?

12 A That is my recollection, sir.

13 Q Notwithstanding the fact that the plate said
14 dealer?

15 A That is correct.

16 Q You have had some experience in connection with
17 narcotics seizures, haven't you?

18 A Some, yes, sir.

19 Q You have been involved in instances where
20 contraband narcotics had been seized from a car, isn't that
21 right?

22 A Yes, sir.

23 Q In fact, it was on the basis of your experience
24 as a narcotics officer that you came to this conclusion
25 about a leased car, right?

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Pallatroni-cross

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A Yes, sir.

Q The fact that on frequent occasions narcotics has been seized from leased cars, is that right?

A Leased cars, rented cars.

Q Leased cars or rented cars. How many times has narcotics been seized from a leased or rented car within the five years prior to February 3, 1972?

A I couldn't tell you how many times, sir, but on a substantial amount of times they were seized from rented or leased cars.

Q How many from a car with dealer's plates?

A I don't know, sir.

Q Do you know of any one?

A I don't recall, sir.

Q You testified before, haven't you, that a leased car or a rented car would be given back to the owner in the event it is seized carrying contraband?

A That is my experience.

Q But you have no experience with what happens to dealer's cars, isn't that right?

A Well, a dealer's car, I believe it would also go back to the dealership.

Q You just told us you know of no instance where narcotics was seized from a car with dealer's plates and

1 arbr

Pallatroni-cross

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2 now you are telling us what you believe as to what would
3 happen in a situation that never occurred.

4 MR. BELLER: Objection to the question and
5 screaming.

6 The witness testified as to what might happen
7 if a dealer's car was seized with narcotics.

8 THE COURT: The question is argumentative.
9 None of you are stating it precisely and let's go on to
10 something else.

11 Q You testified that one of the reasons
12 narcotics traffickers use leased or rented cars is to
13 conceal their identity, is that right?

14 A That is correct, sir.

15 Q Have you ever brought a car in for service
16 at any place, your own car?

17 A Yes, I have.

18 Q Have you ever borrowed a car from a dealer?

19 A No, sir, I have not.

20 Q They don't lend them to people generally?
21 That is a pretty goof favor, isn't it, from your own
22 experience as of February 3, 1972?

23 MR. BELLER: I object.

24 THE COURT: The Court has experience with
25 its own car. I think you are stringing this out

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2 already unduly with over-extensive cross examination.

3 It is not unknown for a person to have a car with dealer's
4 plates.

5 MR. FISHER: He testified I believe that
6 on February 3, 1972 --

7 THE COURT: It couldn't be forfeited if it didn't
8 belong to the person using it for an illegal purpose,
9 isn't that the belief?

10 MR. FISHER: I believe it si unfounded and
11 erroneous.

12 THE COURT: It is partially founded and partially
13 unfounded. Let us proceed. To get the car back they have
14 to prove the isolated use was done without the person's
15 knowledge or procurement.

16 MR. FISHER: More than that.

17 THE COURT: We have these cases in court,
18 the United States of America against one 1967 Cadillac.
19 The Cadillac always seems to lose.

20 MR. FISHER: Except for the leased orrented
21 cars but how about for dealers' cars?

22 THE COURT: I don't know that, Mr. Fisher.
23 All right, go ahead.

24 Q In any event, sir, you tell us that you believed
25 that this was a leased car, you are telling us you believed

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2 that, you believed that was so the identify of the
3 driver wouldn't be known and you nevertheless entered
4 a check to find out who owned the car, is that right?

5 A That is correct, sir.

6 MR FISHER: May I have a moment or two, your
7 Honor?

8 THE COURT: Yes.

9 (Pause.)

10 MR.FISHER: I have no further questions,
11 your Honor.
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BY MR. ROSENBERG:

Q Mr. Pallatroni, in these inter-car communications on this surveillance, you are able to speak to someone in another car?

A Yes.

Q You're also in touch with home base or home base can hear what is going on in between the cars?

THE COURT: We really had that, haven't we? You don't question the truth of the other witnesses in that regard, do you?

MR. ROSENBERG: Well, your Honor, I am trying to develop a different point.

THE COURT: Let's get right to it.

Q Is it correct that when speaking to somebody in another car the home base automatically hears that conversation; is that right?

THE COURT: That is a different question.

A That depends, sir, on what channel you are on. I don't recall the exact radio facilities we had there but there are a number of channels.

I believe channel 1 was the base and car to car. I believe there are several other channels and I don't recall if we had them in at the time. But I believe they were. If I went to channel 2, just car to car, then I

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2 don't believe the base station would hear that.

3 However, you could push such a button and
4 the base couldn't hear you but the car would hear the
5 base if the base was trying to reach a certain unit. That
6 is my recollection of the radio system at the time.

7 Q Let's go back to this particular evening, sir.

8 Was your inter-car communication and base
9 operating on the same frequency so that when you called
10 the base the other car would have heard it?

11 A I can't really recall, sir.

12 Q Would there be a reason why you would want it
13 any other way?

14 A There is a reason, in my opinion a very good
15 reason.

16 Q Let us talk about this particular evening.

17 MR. BELLER: Can we get the reason, please?

18 THE COURT: It is not clear what the question is.

19 MR. ROSENBERG: I am trying to find out just how
20 they were operating on February 3, 1972, your Honor,
21 whether the two cars were in communication with each other
22 and with home base so everybody can hear everybody else.

23 Q Do you understand the question?

24 A I understand the question and to answer your
25 question I really don't recall how we were using the radio,

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2 if the base could hear us or not. I don't recall then when
3 we spoke to one another. At times we spoke to the base.
4 I don't know if I switched channels for these or what.
5 I can't be positive.

6 Q During the course of the evening how many times
7 did you speak to the base, if you recall?

8 A I couldn't recall.

9 Q You said several times?

10 A More than two or three times.

11 Q Spurdis and Reilly and the other car, did
12 they call home base?

13 MR. BELLER: Objection.

14 THE COURT: If he knows.

15 Q Do you know?

16 A I don't recall if they called base, sir.

17 Q So that your only recollection is that you yourself
18 called home base?

19 A And getting messages from my units out there.

20 Q What is the purpose of the log? Is that to put
21 down everything that you say between you and home base?

22 A No, I wouldn't say it is the purpose of putting
23 down everything. The purpose of the log is to know who
24 is in service, in other words, who is on the air out there
25 working, who is off the air, for certain messages like

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2 license plate checks and other types of investigative aids
3 But not every message is logged in that book.

4 Q Not every message would be logged is that what
5 you are telling us?

6 A That is right.

7 Q That is up to the individual at home base to
8 make his own determination as to what they should log and
9 omit?

10 MR. BELLER: I object to these questions. I don't
11 see where we are going.

12 THE COURT: I don't know whether the witness knows
13 He isn't in charge of home base, is he?

14 MR. ROSENBERG: I am trying to find out.

15 THE COURT: I will let him answer the present
16 question but let's limit your inquiry.

17 MR. BELLER: I will just say on this thing, your
18 Honor, there are a number of cases related to events,
19 pending cases that relate to events that occurred on this
20 evening and other evenings and so on.

21 THE COURT: What he is asking him is the practice
22 as he understands it, if the man knows. It is no secret.
23 He can tell what the custom and practice is. If he doesn't
24 know he should answer the question and say I don't know.
25 I don't know if he ever worked home base, whether he has any

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2 supervision or over the log keeping or what he knows.

3 But I see nothing wrong with the question. There is nothing
4 secret about it.

5 MR. BELLER: Just that the government is concerned
6 that these proceedings not be used as a discovery proceeding
7 in other cases and so on.

8 THE COURT: That is a valid concern but I
9 don't think they overreached yet. What is the question,
10 please?

11 Q Who was on home base that evening?

12 A I don't know, I don't recall.

13 Q Are they supposed to record, is the purpose
14 of their job to record what you are telling them? In
15 other words, if you say "I am going to make an arrest",
16 do they record it?

17 A No, sir.

18 Q They do not?

19 A I wouldn't tell them that in the first place.

20 Q What is it they are supposed to record and what
21 is it they are not supposed to record?

22 MR. BELLER: I object to these questions unless
23 we have some reason to believe this relates to the probable
24 cause issue before the court.

25 THE COURT: Do you know?

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2 THE WITNESS: I know certain things. I don't
3 recall everything supposed to be recorded.

4 THE COURT: It gets too broad. Pin it down to
5 something.

6 Q With respect to an arrest, if you are advising
7 home base I am going to make an arrest, would they record it?

8 A As I told you before, I wouldn't advise them
9 about making an arrest.

10 Q Presupposing you would have advised them would
11 they record it?

12 THE COURT: You are assuming that without a
13 basis in that the witness says such advice would not be
14 given to base and I will sustain the objection.

15 MR. ROSENBERG: That is not what I have been advised

16 THE COURT: You asked about somebody else. There
17 is no basis to the question.

18 MR. ROSENBERG: There is a basis in the previous
19 hearing which I am trying to elicit at this point.

20 THE COURT: Well, on your representation there is
21 I will allow it.

22 MR. BELLER: Can we have an offer of proof out
23 of the presence of the witness?

24 THE COURT: That may save some time. You are excused
25 for a moment.

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2 (Witness leaves the courtroom.)

3 THE COURT: It seems somewhat inconceivable
4 to me I would say because no one knows whether somebody
b6 5 else isn't tuned into that frequency.

6 MR. ROSENBERG: My recollection of the other
7 hearing was not that he gave the order to stop the car
8 and cause the arrest but that Spurdie acted on his own so
9 I respectfully submit, your Honor, but if that was so,
10 Spurdie said that, it is very possible that would be logged
11 and, number 2, it would go to the credibility of this
12 witness.

13 MR. BELLER: Your Honor, in the previous hearing
14 the defendants called Spurdie to the stand and Spurdie's
15 testimony was that he was in charge of the investigation
16 and gave the order to arrest. Judge Duffy made comments
17 about Spurdie's credibility and he is available to the
18 defendants and he was at the last hearing and if they choose
19 to call him in their case, that is fine. I have represented
20 the only entries with respect to that evening, February 3rd
21 from 7 to 12 are marked on Government Exhibit 2.

22 THE COURT: What is it you propose to elicit from
23 this witness, Mr. Rosenberg?

24 MR. ROSENBERG: Perhaps he was mistaken whether or
25 not he was the one that really ordered the arrest or it was

1
2 somebody else ordered the arrest. If in fact it was some-
3 body else I would like to know about it.

4 THE COURT: I don't know that you are going to
5 come to it this way. I think that might be a legitimate
6 avenue for inquiry. You can ask the witness whether he
7 knows about it. If he doesn't he is bound to tell you he
8 doesn't know.

9 MR. ROSENBERG: Based upon the government's
10 representation that nowhere anywhere place there is a
11 writing with respect to who ordered the arrest, your Honor,
12 I will discontinue that line.

13 MR. BELLER: The position of the government
14 as far as this log, the only recording with respect to
15 these four agents were those ones in Exhibit 2.

16 THE COURT: Is that a satisfactory representation?

17 MR. ROSENBERG: Yes, your Honor. I am ready to
18 proceed.

19 THE COURT: Do you have much more?

20 MR. ROSENBERG: Yes, I am going to a different
21 area.

22 THE COURT: How much longer will you be?

23 MR. ROSENBERG: I don't know how long your
24 Honor usually works. I believe about another 15 or 20
25 minutes.

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2 THE COURT: I wouldn't ordinarily continue that
3 late. I suspect very much that we are going to have to
4 continue this hearing at another date.

5 MR. ROSENBERG: I can expedite it a little, your
6 Honor?

7 THE COURT: Is it indicated to the court that
8 all of you will be engaged all day tomorrow?

9 MR. FISHER: Yes, your Honor, all counsel present
10 are arguing before the Court of Appeals tomorrow in United
11 States v. Tramunti. That is an all day affair I believe,
12 I don't think it is catered but it is an all day affair.

13 MR. BELLER: May I just say something? Agent
14 Pallatroni does have to return to Washington. It was my
15 understanding that we would be finished with him today.
16 If Mr. Rosenberg -- and I have a very, very brief redirect
17 which wouldn't take more than two minutes, perhaps we could
18 have some indication or an offer of proof of what Mr.
19 Rosenberg has in mind since I think the cross-examination
20 of Mr. Pallatroni was very extensive as it is. He has
21 been on since 2:15.

22 THE COURT: If counsel can confer briefly and
23 get something conceded you are free to do so but otherwise
24 I think I would just simply ask him to come back at an
25 adjourned date which will not be tomorrow.

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2. If you gentlemen can confer privately and
3. reach some accommodation, you have to remember the court
4. reporters, and we have the United States marshals to con-
5. sider as some of these defendants have to go back and the
6. staff of this courthouse work long days and in fact we
7. have been going on since around 9:15 this morning, including
8. the stenographic reporters here and that is a long day.

9. MR. BELLER: I would just inquire whether he
10. actually could finish in about five minutes.

11. THE COURT: Do you think you could finish in five
12. minutes?

13. MR. ROSENBERG: I don't think so. I have the area
14. of credibility, your Honor.

15. THE COURT: You believe you will be a half hour
16. on credibility?

17. MR. ROSENBERG: I will go as long as the court--

18. THE COURT: There is no use in taking 15 minutes
19. and then cut you off and leaving you with a grievance.
20. I expect you all to be reasonable in this matter. If you
21. tell me in good faith you can finish within that time allowed
22. today, I will have to come back and finish another day.

23. MR. ROSENBERG: I sincerely believe --

24. THE COURT: I accept your statement.

25. We can't start trial on the 4th, it has been

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2 represented to my clerk I think that Mrs. Rosner has
3 some case with Judge Carter?

4 MRS. ROSNER: That was a trial involving Agent
5 Pallatroni and Reed before Judge Carter and I think the
6 matter is adjourned without date so I have no conflict
7 in my schedule.

8 THE COURT: I don't know where I got this informa-
9 tion from but it came to chambers somehow. I don't have
10 any notes of it but it was represented to me.

11 Just a minute while I confer with the clerk.

12 (Pause)

13 THE COURT: November 7th at 10 o'clock.

14 MR. LAIFER: In that regard, your Honor, we
15 were supposed to receive a superseding indictment in this
16 case, if your Honor will recall the last time this matter
17 was on, from the government.

18 I spoke to the Assistant and --

19 THE COURT: I must say to you I don't recall that.
20 Was that stated in this case?

21 MR. LAIFER: Yes, sir, it was.

22 THE COURT: I'm sorry, it doesn't ring a bell
23 in my mind.

24 MR. LAIFER: I forgot who made that representation
25 in that regard.

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2 THE COURT: I have this down for trial on the
3 4th.

4 MR. LAIFER: I have a motion to make awaiting
5 the superseding indictment, the Roviero situation with
6 respect to the area of dates encompassing any periods of
7 time and concerning my particular client.

8 THE COURT: Let us get to the bottom of this
9 superseding indictment. When are we going to be superseded

10 MR. BELLER: I spoke to Mr. Cooney and I believe
11 he told me he would have it tomorrow morning. The supersede
12 really is a technical one, one count is being dropped, the
13 third count and the dates are being conformed by the others
14 and other than that it is the same indictment.

15 MR. LAIFER: I would only ask that there are
16 several motions I must make and at that time I was advised
17 I have to wait until this superseding indictment --

18 MR. BELLER: You will have it tomorrow morning.

19 MR. LAIFER: After I receive it I would make
20 several motions, one in the area of Roviero and one on
21 a severance.

22 THE COURT: You may come in with your motion but
23 it has to be made on some sort of papers.

24 MR. LAIFER: I definitely want to.

25 THE COURT: Do it as soon as you can after

b7 1 you get the indictment.

2 MR. FISHER: The defendant Papa filed a double
3 jeopardy motion and a Santobella motion with regard to
4 both counts in which he is named in this indictment.
5

6 THE COURT: What is that Santobella motion?
7

8 MR. FISHER: A promise made to Mr. Papa by Mr.
9 James Drucker, special prosecutor, strike force, Eastern
District of New York.

10 THE COURT: That case was a promise made by
11 a judge, isn't it?
12

13 MR. FISHER: If your Honor please, Santobella--

14 THE COURT: Where is the motion?

15 MR. FISHER: I thought your Honor would have them,
16 they are filed. I am informed they were brought to chambers.

17 MR. BELLER: We received copies Monday morning.
18 Mr. Cooney asked me to advise the court that we believe
19 we will have our papers in response by Tuesday morning.

20 THE COURT: Come back on the 7th and I will try
21 to deal with all these matters with respect to the super-
22 seding indictment and the motions. I will be sitting in
23 the Northern District until the 6th and the 5th is Election
24 Day so I will see all on the 7th and you defendants are
25 to be here at that time please in the courtroom across
the hall and that is a term and condition of your bail and

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2 you will all be present. All right?

3 MR. FISHER: My application is, your Honor,
4 that the writ be continued as to Mr. DiNapoli to allow
5 him to be present in the courtroom 1105 on November 7th
6 for the continuation of the hearing. As the testimony
7 fairly clearly established, he was right in the thick of
8 it so to speak and I think that he would be able to assist
9 me in cross-examination and presentation of the defense
10 with regard to the things that might not be anticipated
11 by defense counsel at this point in time.

12 I will tell you quite frankly there were a
13 couple of statements today that were a little bit surprising
14 that I had not anticipated when this case began and I
15 would like him here when we reconvene.

16 MR. BELLER: Mr. DiNapoli is not a defendant
17 and I said to Mr. Fisher prior to the commencement of
18 any proceedings here today, I asked him whether any of
19 the people in the rear were going to be witnesses and,
20 if so, they should be excluded.

21 THE COURT: Yes, normally any fact witnesses
22 I would exclude if they are going to testify and there is
23 no purpose of them sitting here if they are going to testify.

24 If you need him to testify and he can be made
25 available downstairs in readiness if called.

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2 THE COURT: I take it he is imprisoned on
3 some felony charge?

4 MR. FISHER: In the Tramunti case.

5 THE COURT: He is serving a sentence and you
6 want to writ in a man who is serving a sentence for
7 the purpose of sitting with defense counsel and assisting
8 him in cross-examining persons, is that what you are
9 suggesting?

10 MR. FISHER: To adjourn the writ, yes, sir.

11 THE COURT: I don't know of any foundation for
12 thatat all. You can visit him in the correctional instituti
13 and you can review the minutes with him if you like but
14 the idea of having somebody serving a penal sentence writte
15 in here and brought at government expense to sit with couns
16 to assist in cross-examining in a related case, I just
17 don't see any basis for that at all.

18 I have never heard of such a thing.

19 MR. FISHER: I made the precise same application
20 which was granted with the consent of the government and
21 that is why Mr. DiNapoli was here today.

22 THE COURT: The court could see his weight and
23 build.

24 MR. FISHER: That is still going to happen with
25 regard to another witness, your Honor.

2 THE COURT: I thought there were no more
3 witnesses?

4 MR. FISHER: I intend to call Mr. Reed as the
5 government well knows.

6 THE COURT: Well, that is cumulative because
7 I have seen his height and build and I observed the disparity
8 between the two of them.

9 I just don't see any purpose in that at all,
10 I really don't. I am going to satisfy the writ for Mr.
11 DiNapoli and the rest of them are continued until the 7th.
12 All right, that is all.

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14 (Adjourned to November 7, 1974, at 10 A.M.)
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